TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 10

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

STOCKHOLMS ENSKILDA BANK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MARCH 24, 1934
CERTIORARI GRANTED APRIL 30, 1934

SUPREME COURT OF THE UNITED STATES

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STOCKHOLMS ENSKILDA BANK

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65814—34——1

1 Before United States Board of Tax Appeals

Docket No. 55755

STOCKHOLMS ENSKILDA BANK, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances:
For taxpayer, Sanford Robinson, Esq., Truman Henson, Esq., Marion N. Fisher, Esq.
For Commr., O. J. Tall, Esq.

Docket entries

1931
Apr. 8—Petition received and filed. Taxpayer notified. (Fee paid.)
" 8—Copy of petition served on general counsel.
May 13—Answer filed by general counsel.
" 20—Copy of answer served on taxpayer. General Calendar.
Dec. 11—Motion to advance hearing soon after 1/15/32 filed by taxpayer. 12/14/31 granted to 1/19/32.
" 15—Hearing set January 19, 1932.
1932
Jan. 19—Hearing had before Mr. Marquette, div. 1, on merits. Briefs due 2/29/32.
Feb. 6—Transcript of hearing Jan. 19, 1932, filed.
" 25—Brief filed by general counsel.
" 29—Brief filed by taxpayer.
Apr. 29—Opinion rendered, John J. Marquette, div. 1. Decision of no deficiency will be entered.
" 30—Decision entered, John J. Marquette, div. 1.
Oct. 18—Petition for review to the Court of Appeals of the District of Columbia with assignments of error filed by general counsel.
" 25—Proof of service filed.
" 26—Notice of the appearance of Marion N. Fisher as counsel filed.
" 26—Cross assignment of errors filed by taxpayer.
" 26—Proof of service of assignment of errors filed.

Dec. 5—Motion for extension to January 16, 1933, to file præcipe filed by general counsel.
" 5—Order enlarging time to January 16, 1932, for preparation of evidence and delivery of record entered.
" 20—Præcipe filed. Proof of service thereon.
" 23—Counter præcipe filed. Proof of service thereon.
1933
Jan. 16—Order enlarging time to February 1, 1933, for transmission and delivery of record sur petition for review entered.

2 Before United States Board of Tax Appeals

[Title omitted.]

Petition

Filed April 8, 1931

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Bureau symbols IT:AR:C–3, HBE–60D, dated February 12, 1931, and as the basis of this proceeding alleges upon information and belief as follows:

I

Your petitioner is a foreign corporation organized and existing under and by virtue of the laws of the Kingdom of Sweden with its principal office in Stockholm, Sweden; and has no office or place of business in the United States.

II

The notice of deficiency, copy of which is hereto attached, marked "Exhibit A," and by reference made a part hereof, was mailed to your petitioner on or after February 12, 1931.

III

The taxes in controversy are alleged income taxes for the calendar year 1927 in the sum of $1,172.32.

IV

The determination of the tax set forth in said notice of deficiency is based upon the following error:

The respondent erred in determining that the sum of $8,683.81, which was paid to your petitioner in 1927 by the United States Government as interest on a refund of Federal income taxes, was

to be treated as income from sources within the United States and taxable to your petitioner.

V

The facts upon which your petitioner relies as the basis of this proceeding are as follows:

(a) Your petitioner is a foreign corporation, organized and existing under and by virtue of the laws of the Kingdom of Sweden with its principal office in Stockholm, Sweden, and has no office or place of business in the United States.

3 (b) During the year 1927, your petitioner received from the United States Government the sum of $8,683.81 as interest on a refund of Federal income taxes theretofore overpaid for a prior year.

(c) Under the express provisions of the revenue act of 1926, the only income taxable to your petitioner is income from sources within the United States as determined in the manner provided in section 217 of said revenue act of 1926. By said section 217 of said revenue act of 1926, it is expressly and affirmatively provided that all interest shall be treated as income from sources without the United States except "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise." Your petitioner alleges that said sum of $8,683.81 was not interest on a bond, a note or other interest-bearing obligation within the purview of said section 217 of said revenue act of 1926; and further that even if said sum were interest on a bond, note, or other interest-bearing obligation within the purview of said section 217 (which is denied), nevertheless and in any event the bond, note, or other interest-bearing obligation was not of a resident, corporate or otherwise, in that the United States is not a resident within the meaning of said section 217 of said revenue act of 1926.

(d) Under the express and affirmative provisions of the revenue act of 1926, said sum of $8,683.81 was interest to be treated as income from sources without the United States and was not taxable to your petitioner.

Wherefore, your petitioner prays that this board may hear this proceeding and determine that there is no deficiency.

Dated:

(Signed) TRUMAN HENSON,
Counsel for Petitioner, Office and P. O. Address,
26 Liberty Street, New York City, N.Y.

[*Duly sworn to by Sanford Robinson, jurat omitted in printing*]

4 *Exhibit A to petition*

IT:AR:C–3.
HBE–60D.

FEB. 12, 1931.

STOCKHOLMS ENSKILDA BANK,
% Sanford Robinson, 26 Liberty Street,
New York, New York.

SIRS: You are advised that the determination of your tax liability for the year 1927 discloses a deficiency of $1,172.32, as shown in the statement attached.

In accordance with section 274 of the revenue act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D.C., for the attention of IT:C:P–7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.

By (Signed) J. C. WILMER,
Deputy Commissioner.

Enclosures:
Statement.
Form 882.
Form 870.

STATEMENT

IT:AR:C–3.
HBE–60D.

In re: Stockholms Enskilda Bank, % Sanford Robinson, 26 Liberty Street, New York, New York

Tax liability

Year	Tax liability	Tax assessed	Deficiency
1927	$3,163.55	$1,991.23	$1,172.32

Reference is made to the report of the internal-revenue agent in charge, 17 Battery Place, New York, New York, and to your protest submitted under date of September 18, 1929.

5 Careful consideration has been accorded your protest in connection with the agent's findings and the report on the conference held with your representatives on October 7, 1929, in the office of the agent in charge. The adjustments recommended by the agent as the result of the conference have been approved by this office.

Your contention that the interest received on a refund of Federal income tax does not constitute taxable income for the reasons that it does not represent income from sources within the United States, is denied.

Section 233 (a) of the revenue act of 1926 provides that in the case of a foreign corporation, gross income means only gross income from sources within the United States.

Section 217 (a) (1) of the same act provides that in the case of a nonresident alien individual, interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, shall be treated as items of gross income from sources within the United States.

Section 116 of the act also provides that upon the allowance of a credit or refund of any internal-revenue tax erroneously collected interest shall be allowed and paid on the amount of such credit or refund at the rate of six per centum per annum from the date such tax was paid to date of the allowance of the refund.

It is held that the interest so paid was on an interest-bearing obligation of the United States and the amount received by your corporation should be included in gross income from sources within the United States.

Stockholms Enskilda Bank statement

Net income reported in the return	$31,993.53
Add: Interest received on Federal income-tax refund	8,683.91
Net income as adjusted	$40,677.44

For explanation of this item see previous statements.

COMPUTATION OF TAX

Net income as adjusted taxable 13½%	$40,677.44
Tax as 13½%	5,491.45
Less: Income tax paid at source	3,163.55
Tax assessable	3,163.55
Previously assessed	1,991.23
Deficiency	$1,172.32

A copy of this communication has been furnished your authorized representative, Mr. Sanford Robinson, 26 Liberty Street, New York, New York.

Exhibit B to petition

POWER OF ATTORNEY

Know all men by these presents:

That Stockholms Enskilda Bank, a corporation organized under the laws of the Kingdom of Sweden and doing business in the City of Stockholm, Sweden, does hereby make, constitute, and appoint
6 Sanford Robinson and Truman Henson, of #26 Liberty Street, New York, N.Y., its true and lawful attorneys for it and in its name, place, and stead, to represent it before the United States Treasury Department, the bureaus thereof, and the United States Board of Tax Appeals, and elsewhere, and to do any and all things needful and requisite with regard thereto; and

It further authorizes and empowers its said attorneys, or either of them, to make, execute, acknowledge, deliver, and file in its name and as its act and deed any and all Federal income-tax returns, including any and all amended returns, briefs, protests appeals, agreements for final determination, waivers of restrictions, claims, petitions to the United States Board of Tax Appeals, and all other documents and instruments of any and every nature whatsoever with respect thereto, and to begin, institute, prosecute, maintain, and/or settle any and all procedings before the United States Board of Tax Appeals, or elsewhere, to contest any and all deficiencies, assessments, or collections in the premises; and

It further authorizes and empowers its said attorneys, or either of them, to begin, institute, prosecute, maintain, and/or settle any and all appropriate proceedings for the recovery of any Federal income taxes which its said attorneys, or either of them, may deem to be or to have been erroneously or illegally collected from it and/or paid on its behalf, including making, executing, acknowledging, delivering, and filing in its name and as its act and deed any and all claims for refund, complaints, petitions, and/or any and all other instruments and documents in the premises, and to receive and receipt for any and all sums of money in that regard, and to endorse for it and in its name any and all checks, warrants, or other instruments for the payment of money of the United States in payment of any refunds;

Giving and granting unto its said attorneys, and each of them, full power and authority to do and perform all and every act and thing whatsoever requisite, necessary, and/or convenient in the premises or any part thereof as fully to all intents and purposes as it might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that its said attorneys or their substitutes shall lawfully do or cause to be done by virtue hereof, hereby revoking all previous powers of attorney in the premises.

In witness whereof, the said Stockholms Enskilda Bank has caused its corporate name to be signed hereunto by its vice president and its corporate seal to be affixed and attested by its secretary, all being done in the city of Stockholm, Kingdom of Sweden, on this tenth day of September 1929.

[CORPORATE SEAL.] STOCKHOLMS ENSKILDA BANK,
[SEAL.] By (Signed) J. WALLENBERG, *President.*
Attest:
Secretary.

KINGDOM OF SWEDEN,
City of Stockholm, ss:

On this 11th day of September 1929, personally appeared before me, a notary public in and for the city of Stockholm, Mr.
7 Jacob Wallenberg, president of the above-named corporation, to me personally known to be the person described in and who executed the foregoing power of attorney and acknowledged that he executed the same for the purposes therein set forth.

(Signed) BENGT STEUCH,
Acting Notary Public.

Fee and stamp:
Kr. 4:–
(Seal.) (Stamp.)

Before United States Board of Tax Appeals

Answer

Filed May 13, 1931

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, general counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled proceeding, admits and denies as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits the allegations contained in paragraph III of the petition.

IV. Denies that the respondent erred in the manner alleged in paragraph IV of the petition.

V–(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph V of the petition.

V–(c) and (d). Denies the allegations contained in subparagraphs (c) and (d) of paragraph V of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

Wherefore it is prayed that the petitioner's appeal be denied.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:
O. J. TALL,
Special Attorney, Bureau of Internal Revenue.

amm
5/12/31.

Before United States Board of Tax Appeals

STOCKHOLMS ENSKILDA BANK, PETITIONER, *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 55755

In 1927 petitioner received from the United States a refund of overpaid income taxes, together with interest thereon. *Held*, such interest does not constitute gross income from sources within the United States as defined in section 217 (a) (1) of the revenue act of 1926.

TRUMAN HENSON, Esq., for the petitioner.
O. J. TALL, Esq., for the respondent.

Opinion

Promulgated April 29, 1932

MARQUETTE: The petitioner is a foreign corporation, organized and existing under and by virtue of the laws of the Kingdom of Sweden, with its principal office in said country, and has no office or place of business in the United States. During the year 1927 petitioner received from the United States Government the sum of $8,683.91 as interest on a refund of Federal income taxes heretofore overpaid for a prior year. The commissioner increased petitioner's income for the year 1927 by including therein said sum of $8,683.91; and on account of such increase determined a deficiency in the sum of $1,173.32, from which determination the petitioner brings this appeal.

The only question for decision is whether interest paid by the United States to a nonresident foreign corporation on a refund of Federal income taxes in 1927 is a part of gross income from sources within the United States as defined in section 217 (a) (1) of the revenue act of 1926.

Section 233 of the revenue act of 1926 provides as follows:

"(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined (except in the case of insurance companies subject to the tax imposed by sections 243 or 246) in the manner provided in section 217."

Section 217 (a) of the Revenue Act of 1926 provides in part as follows:

"(a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:

"(1) Interest on bonds, notes, or other interest bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein. * * *"

Subdivision (c) of the said section 217 provides in part as follows:

"(c) The following items of gross income shall be treated as income from sources without the United States:

9 "(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)."

Section 284 (a) of the Revenue Act of 1926 provides:

" Where there has been an overpayment of any income, war-profits or excess-profits tax * * *, the amount of such overpayment shall * * * be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer."

Section 1116 of the Revenue Act of 1926 provides:

"(a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously * * * collected * * * interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax * * * was paid to the date of the allowance of the refund."

The petitioner rests its case on two propositions, (1) that interest paid by the United States Government upon a refund of Federal income-taxes is not " interest on bonds, notes or other interest-bearing obligations " within the purview of section 217 (a) (1) of the act, and invokes the rule of ejusdem generis to support its contention; and (2) that in any event, the interest is not upon the obligations " of residents, corporate or otherwise ", for the reason that the United States is not a " resident " within the intent and meaning of the statute.

It is at once apparent that all interest, even though concededly from sources within the United States, is not to be treated as interest from sources within the United States, for subdivision (c) (1) of section 217 provides that interest other than that derived from sources within the United States as provided in paragraph (1) of

subdivision (a) shall be treated as income from sources without the United States. Therefore to constitute gross income from sources within the United States the interest herein must be brought within the provisions of said paragraph (1) of subdivision (a).

We think the petitioner's first contention cannot be sustained. The rule of ejusdem generis is but an aid in the construction of a statute, and the rule must give away where the statute manifests a contrary purpose. Reading this subdivision as a whole we think it is apparent that the Congress did not intend to restrict the inclusion to interest on obligations of a like character as bonds or notes, for it speaks of interest on deposits of a particular character which are not included, manifesting an intention that interest on other deposits should be included. The words "other interest-bearing obligations" should not, therefore, be restricted to obligations of a like character as bonds or notes.

The petitioner's second contention seems to contain more of merit. The statute provides for inclusion of interest on "interest-bearing obligations of residents, corporate or otherwise", and petitioner argues that even if the interest received is interest upon an interest-bearing obligation within the meaning of the statute, nevertheless the obligation is not that of a resident, corporate or otherwise. In other words its proposition is that the United States is not a "resident", and that the terms cannot be applied to a sovereign or government.

10 In State, Montgomery, prosecutor, *v.* Inhabitants of the City of Trenton, 40 N.J.L. 89, the Supreme Court of New Jersey held that indebtedness to the State could not be deducted from the taxable value of property under a statute permitting the deduction of indebtedness to residents. The court said, in part:

"It is only by the greatest latitude of construction that we can say that the State resides within the State. The word 'residing' refers to individual abode, though it is sometimes used figuratively. It will not apply to the State in its representative and governmental relation to its citizens. The people, as individuals, reside in the State, but the political body called the State cannot be said, in the proper use of language, to reside anywhere."

In Consorzio Veneziano di Armanemto e Navigazione, petitioner, *v.* Commissioner of Internal Revenue, respondent, 21 B.T.A. 984, 988, this board had occasion to discuss the question of whether interest paid on an award of just compensation to a foreign corporation came within the statute, and it was there said:

"In our opinion, even if the amount constituted interest, it was not interest on bonds, notes of other interest-bearing obligations of residents, corporate or otherwise. It would be a strained construction to say in the first place that the United States was a resident, corporate or otherwise, of the United States. Wherever in the statute obligation of the United States are referred to they are referred to specifically as 'obligations of the United States.' The expression 'resident' in its ordinary acceptance does not refer to

the Government itself and the language in the statute 'resident, corporate or otherwise', we think should be given its ordinary and generally accepted meaning."

However, if this be a doubtful construction of the statute, we think the rule should be applied that the taxing statutes must be strictly construed, and if there be doubt as to the proper construction that doubt must be resolved in favor of the taxpayer. United States v. Merriam, 263 U.S. 179; Reinicke v. Northern Trust Company, 278 U.S. 339; Burnet v. Niagara Falls Brewing Co., 282 U.S. 648.

In United States v. Merriam, supra, the Supreme Court said:

"On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer."

We are, therefore, of opinion that the interest paid to the petitioner herein on a refund of Federal income taxes should not be treated as income from sources within the United States, within the purview of section 217 (a) (1) of the revenue act of 1926.

Decision of no deficiency will be entered.

11 Before United States Board of Tax Appeals, Washington

Docket No. 55755

STOCKHOLMS ENSKILDA BANK, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the determination of the board, as set forth in its report promulgated April 29, 1932, it is

Ordered and decided: That there is no deficiency for the year 1927.

A true copy.

Teste:

[SEAL.] B. D. GAMBLE,
Clerk U.S. Board of Tax Appeals.

Enter:

(Signed) JOHN J. MARQUETTE,
Member.

Entered, Apr. 30, 1932.

In Court of Appeals of the District of Columbia

(Title omitted.)

Petition for review and assignments of error

Received and filed October 18, 1932

To the Honorable Judges of the Court of Appeals of the District of Columbia:

Now comes David Burnet, Commissioner of Internal Revenue, by his attorneys, G. A. Youngquist, Assistant Attorney General, C. M. Charest, general counsel, Bureau of Internal Revenue, and Otis J. Tall, special attorney, Bureau of Internal Revenue, and respectfully shows:

I

JURISDICTION

The petitioner on review (hereinafter referred to as the commissioner) is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the lows of the United States. The respondent on review (hereinafter referred to as the taxpayer) is a foreign corporation having no principal place of business or principal office or agency
12 in the United States, its principal place of business being Stockholm, Sweden. In accordance with section 1002 (c) of the revenue act of 1926, this case is subject to review by the Court of Appeals of the District of Columbia.

II

NATURE OF CONTROVERSY

The taxpayer, a foreign corporation with principal offices in Sweden, received from the United States Government during the taxable year 1927, the amount of $8,683.91, representing interest paid by the United States Government on a refund of Federal income taxes, which taxes the taxpayer had overpaid for a prior year. On February 12, 1931, the commissioner mailed a notice of deficiency. On April 8, 1931, the taxpayer filed an appeal from the notice of deficiency with the United States Board of Tax Appeals. The hearing of the said appeal by the Board of Tax Appeals was held on January 19, 1932. On April 21, 1932, the board promulgated its findings of fact and opinion and on April 30, 1932, entered its final order of redetermination, wherein and whereby the board ordered and decided that there was no deficiency for the year 1927.

The board's determination that there is no deficiency for the year 1927 cognizable in respect to the taxpayer is based upon the de-

cision of that tribunal to the effect that the interest received by the taxpayer during the year 1927 on a refund of income taxes overpaid for prior years does not constitute gross income from sources within the United States, as defined in section 217 (a) (1) of the revenue act of 1926.

III

ASSIGNMENTS OF ERROR

The commissioner says that in the record and proceedings before the United States Board of Tax Appeals and in the opinion and decision rendered and entered by said board manifest error occurred and intervened to the prejudice of the commissioner, and the commissioner assigns the following errors, and each of them, which, he avers, occurred in the said record, proceedings, opinion, and decision and upon which he relies to reverse the said opinion and decision so rendered and entered by the United States Board of Tax Appeals, to wit:

1. The United States Board of Tax Appeals erred as a matter of law in holding that the interest in the amount of $8,683.91 received by the taxpayer during the year 1927 does not constitute gross income from sources within the United States, as defined in section 217 (a) (1) of the revenue act of 1926.

2. The United States Board of Tax Appeals erred as a matter of fact and law in finding and/or holding that the United States is not a resident, corporate or otherwise, of the United States, within the meaning of section 217 (a) (1) of the revenue act of 1926.

3. The United States Board of Tax Appeals erred as a matter of fact and/or law in finding and/or holding that the United
13 States is not a resident within the meaning of section 217 (a) (1) of the 1926 act.

4. The United States Board of Tax Appeals erred in determining that there is no deficiency for the year 1927 in respect of the taxpayer.

5. The United States Board of Tax Appeals erred in failing to find a deficiency for the year 1927 in the amount of $1,173.32.

Wherefore the commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the Court of Appeals of the District of Columbia, that a transcript of the record be prepared in accordance with law and with the rules of said court and transmitted to the clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

G. A. YOUNGQUIST,
Assistant Attorney General.
(*Signed*) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:
OTIS J. TALL,
Special Attorney, Bureau of Internal Revenue.

[*Duly sworn to by C. M. Charest; jurat omitted in printing.*]

In Court of Appeals of the District of Columbia

[Title omitted.]

Notice of filing petition for review

Received and filed Oct. 25, 1932

To: TRUMAN HENSON, Esq.,
26 Liberty Street, New York, New York.

You are hereby notified that the Commissioner of Internal Revenue, did, on the 18th day of October, 1932, file with the
14 clerk of the United States Board of Tax Appeals, at Washington, D.C., a petition for review by the Court of Appeals of the District of Columbia, of the decision of the board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 18th day of October, 1932.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 19th day of October, 1932.

TRUMAN HENSON,
Attorney for Respondent on Review.

In Court of Appeals of the District of Columbia

[Title omitted.]

Cross assignment of errors

Filed Oct. 26, 1932

To the Honorable Judges of the Court of Appeals of the District of Columbia:

Now comes Stockholms Enskilda Bank, the respondent on review, by its atorneys, Truman Henson and Marion N. Fisher, and says that the United States Board of Tax Appeals did not err in any of the particulars assigned as error by the petitioner on review herein, but correctly held, found, and decided in each and every of said particulars and in its determination that there is no deficiency for the year 1927 in respect of said respondent on review; but said respondent on review further says that it will rely for affirmance o

the decision of the United States Board of Tax Appeals herein not only upon the correctness of the holdings, findings, and decision of the United States Board of Tax Appeals herein in respect of each and all of the particulars assigned as error by the petitioner on review, but also, and in the alternative, upon the errors hereby assigned as follows:

1. The United States Board of Tax Appeals erred in finding and/or holding that the sum of $8,683.91 paid to the respondent on review during the year 1927 by the United States Government as interest on an overpayment of Federal income taxes theretofore made by said respondent on review for a prior year constitutes interest on bonds, notes, or other interest-bearing obligations within the meaning of section 217 (a) (1) of the Revenue Act of 1926.

2. The United States Board of Tax Appeals erred in failing
15 to find and/or hold that the sum of $8,683.91 paid to the respondent on review during the year 1927 by the United States Government as interest on an overpayment of Federal income taxes theretofore made by said respondent on review for a prior year is exempt from income tax by virtue of the provisions of section 213 (b) (4) of the revenue act of 1926.

Wherefore said respondent on review prays that, for the errors hereinabove assigned and/or either of them, and/or for the correctness of the findings, holdings, and decision of the United States Board of Tax Appeals in all particulars other than said errors hereinabove assigned, the decision of the United States Board of Tax Appeals in this cause be affirmed.

MARION N. FISHER,
TRUMAN HENSON,
Attorneys for Stockholms Enskilda Bank,
Office and P. O. Address, 26 Liberty Street, New York, N.Y.

In Court of Appeals of the District of Columbia

[Title omitted.]

Notice of filing cross assignment of errors

Filed Oct. 26, 1932

To: C. M. CHAREST, Esq.,
General Counsel, Bureau of Internal Revenue,
Internal Revenue Building, Washington, D.C.

You are hereby notified that the Stockholms Enskilda Bank did on the 26th day of October, 1932, file with the clerk of the United States Board of Tax Appeals at Washington, D.C., a cross assign-

ment of errors in the above-entitled case. A copy of such cross assignment of errors as filed is hereto attached and served upon you.

Dated this 26th day of October, 1932.

MARION N. FISHER,
TRUMAN HENSON,
Attorneys for Stockholms Enskilda Bank,
Office and P. O. Address, 26 Liberty Street, New York, N.Y.

Personal service of the above and foregoing notice together with a copy of assignment of errors mentioned therein is hereby acknowledged this 26th day of October, 1932.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

16 In court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for record

Received and filed Dec. 20, 1932

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the clerk of the Court of Appeals of the District of Columbia, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Court of Appeals of the District of Columbia, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the board.
2. Pleadings before the board.
   (a) Petition, including annexed copy of deficiency letter.
   (b) Answer.
3. Opinion of the board.
4. Decision of the board.
5. Petition for review, together with proof of service of filing petition for review and of service of a copy of petition for review.
6. Order enlarging time, not included in record.
7. This præcipe.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Service of a copy of the within præcipe is hereby admitted this 16th day of December, 1932.

TRUMAN HENSON,
Attorney for Respondent.

In Court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for record

U.S. Board of Tax Appeals. Filed Dec. 23, 1932

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the clerk of the Court of Appeals of the District of Columbia copies duly
17 certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Court of Appeals of the District of Columbia, heretofore filed by the Commissioner of Internal Revenue:

1. Cross assignment of errors, together with proof of service of notice of filing cross assignment of errors and of service of a copy of cross assignments of errors.

2. This præcipe.

(Sgd.) TRUMAN HENSON,
Attorney for Respondent.

Service of a copy of the within præcipe is hereby admitted this 21 day of December, 1932.

(Sgd.) C. M. CHAREST,
Attorney for Petitioner.

[Clerk's certificate to foregoing transcript omitted in printing.]

Before United States Board of Tax Appeals

Order enlarging time

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of
18 the above-entitled proceeding in the Court of Appeals for the District of Columbia be and it is herby extended to January 16, 1933.

(Signed) LOGAN MORRIS,
Member.

A true copy.
Teste:
[SEAL.]

B. D. GAMBLE,
Clerk, U.S. Board of Tax Appeals.

Dated: Washington, D.C., Dec. 5, 1932.

Before United States Board of Tax Appeals

Order enlarging time

For cause appearing of record, it is

Ordered: That the time for transmission and delivery of the record sur petition for review of the above-entitled proceeding by the Court of Appeals, District of Columbia, be and it is hereby extended to Feb. 1, 1933.

(Signed) LOGAN MORRIS,
Member.

A true copy.
Teste:
[SEAL.] B. D. GAMBLE,
Clerk, U.S. Board of Tax Appeals.
Dated Washington, D.C., January 16, 1933.

19 In Court of Appeals of District of Columbia

No. 5889

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, APPELLANT

vs.

STOCKHOLMS ENSKILDA BANK

Order substituting party appellant

July 17, 1933

On consideration of the motion filed herein by counsel for the Commissioner of Internal Revenue to substitute Guy T. Helvering for David Burnet, retired, It is ordered by the court that Guy T. Helvering, Commissioner of Internal Revenue, be, and he is hereby, substituted as party appellant in the above entitled cause in the place and stead of David Burnet, retired.

20 [Minute entry of argument and submission, Nov. 10, 1933, omitted in printing.]

21 In Court of Appeals of the District of Columbia

No. 5889

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, APPELLANT

v.

STOCKHOLMS ENSKILDA BANK

Appeal from the Board of Tax Appeals

Argued November 10, 1933. Decided December 4, 1933

G. A. Youngquist, Sewall Key, J. L. Monarch, W. C. Thompson, and C. M. Charest, all of Washington, D.C., for appellant.

Truman Henson, of New York City, for appellee.

Before Martin, Chief Justice, and Robb and Groner, Associate Justices.

Opinion

MARTIN, *Chief Justice:* An appeal from a decision of the Board of Tax Appeals.

The facts are simple and undisputed. The appellee is a foreign corporation having no office or place of business in the United States. In the year 1927, the United States Government paid to the corporation the sum of $8,683.91 as interest on a refund of Federal income taxes overpaid by it in a prior year. The interest was paid under the provisions of section 1116 of the Revenue Act of 1926, which provides:

"(a) Upon the allowance of a credit or refund of any internal revenue tax erroneously * * * collected * * * interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax * * * was paid to the date of the allowance of the refund."

In the year 1927, the Commissioner increased the corporation's income by including therein an amount for the interest upon the refund aforesaid, to wit, $8,683.91, and assessed income tax thereon for that year, thereby determining a deficiency in the sum of $1,173.32, from which determination the taxpayer appealed to the Board of Tax Appeals.

The only question for decision by the Board was whether interest paid by the United States to a nonresident foreign corporation on a refund of Federal income taxes in 1927 was a part of its "gross income" from sources within the United States as defined by the Revenue Act of 1926.

22 Section 233 of the Revenue Act of 1926 provides as follows:

"(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217."

Section 217 (a) of the Revenue Act of 1926 provides, in part, as follows:

"(a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States: (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise * * *.

* * * * * * *

"(c) The following items of gross income shall be treated as income from sources without the United States: (1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)."

The Board of Tax Appeals held that the interest paid by the Government upon the refund was not "income from sources within the United States" as defined by section 217, inasmuch as it was not interest accrued upon an obligation of a resident of the United States but upon an obligation of the United States Government which is not a "resident" within the intent and meaning of the act. The Board accordingly held that the interest received by the taxpayer was not taxable, and entered a decision of "no deficiency" upon the appeal. From that decision the present appeal was taken.

We think the Board's decision is correct. The amount of interest paid upon the refund to the foreign corporation would be taxable under the statute only in case the payment came within the classification of "Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise * * *." The obligation, however, upon which interest was paid in this case was not that of a resident, corporate or otherwise, inasmuch as the United States is not a "resident", as that term is used in the taxing statute.

In United States v. Temple, 105 U.S. 97, the court said:

"Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction, for the purpose of either limiting or extending its operation."

In State v. City of Trenton, 40 N.J.L. 89, the Supreme Court of New Jersey held that indebtedness to the State could not be deducted from the taxable value of property under a statute permitting the deduction of indebtedness to residents. The court said, in part:

"It is only by the greatest latitude of construction that we can say that the State resides within the State. The word 'residing' refers to individual abode, though it is sometimes used figuratively. It will not apply to the State in its representative and governmental relation to its citizens. The people, as individuals, reside in the State, but the political body called the State cannot be said, in the proper use of language, to reside anywhere."

In Consorzio Veneziano de Armanemto e Navigazione, Petitioner, v. Commissioner of Internal Revenue, 21 B.T.A. 984, 988, the Board, observed as follows:

23 "In our opinion, even if the amount constituted interest, it was not interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise. It would be a strained construction to say in the first place that the United States was a resident, corporate or otherwise, of the United States. Wherever in the statute obligations of the United States are referred to they are referred to specifically as 'obligations of the United States.' The expression 'resident' in its ordinary acceptance does not refer to the Government itself and the language in the statute 'resident, corporate or otherwise', we think should be given its ordinary and generally accepted meaning."

Article 1509 of Regulations 69 is cited by the Board in support of its decision.

As is stated by the Board in its decision "If this be a doubtful construction of the statute, we think the rule should be applied that the taxing statutes must be strictly construed, and if there be doubt as to the proper construction that doubt must be resolved in favor of the taxpayer. *United States* v. *Merriam*, 263 U.S. 179; *Reinicke* v *Northern Trust Company*, 278 U.S. 339; *Burnet* v. *Niagara Falls Brewing Co.*, 282 U.S. 648."

In the present case the application of this rule seems peculiarly appropriate inasmuch as the payment in question represented interest which the Government was paying as provided by statute because of an overassessment of income taxes theretofore imposed by the Government upon the taxpayer. To assess income taxes upon such a repayment would amount to the imposition of a penalty upon the taxpayer because of the error theretofore committed by the Government against him. *Escher* v. *Woods*, 281 U.S. 379.

The decision of the Board of Tax Appeals is hereby affirmed.

Mr. Justice Groner dissents.

A true copy.
Teste:

Clerk, D.C. Court of Appeals.

24 In Court of Appeals of District of Columbia

No. 5889. October Term 1933

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, APPELLANT

vs.

STOCKHOLMS ENSKILDA BANK

Judgment

December 4, 1933

Appeal from the Board of Tax Appeals.

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be and the same is hereby affirmed.

Per Mr. Chief Justice MARTIN,

DECEMBER 4, 1933.

Mr. Justice Groner dissents.

Mr. Justice Van Orsdel and Mr. Justice Hitz took no part in the consideration or decision of this case.

25 In the Court of Appeals of the District of Columbia

Præcipe for transcript of record

Filed Feb. 26, 1934

The Clerk will prepare a transcript of record in the above entitled case, including the following:

1. Printed record.
2. Order substituting Guy T. Helvering, Commissioner of Internal Revenue, in place of David Burnet.
3. Note of argument.
4. Opinion.
5. Judgment.
6. This designation, and Clerk's certificate.

J. CRAWFORD BIGGS,
Solicitor General,
Counsel for Appellant.

FEBRUARY, 1934.

[File endorsement omitted.]

26 [Clerk's certificate to foregoing transcript omitted in printing.]

29 In Supreme Court of the United States

Order extending time within which to apply for a writ of certiorari

Filed Feb. 27, 1934

On consideration of the motion of counsel for the petitioner in the above entitled cause, and good cause therefor having been shown, it is now here ordered that the time within which a petition for a writ of certiorari may be filed herein be, and the same hereby is, extended for a period of sixty days from March 4, 1934.

Dated this 26th day of February, 1934.

CHARLES E. HUGHES,
Chief Justice of the United States.

[File endorsement omitted.]

30 Supreme Court of the United States

Order allowing certiorari

Filed April 30, 1934

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File No. 38,498. District of Columbia, Court of Appeals. Term No. 10. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. Stockholms Enskilda Bank. Petition for a writ of certiorari and exhibit thereto. Filed March 24, 1934. File No. 895 O.T. 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1934

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

STOCKHOLMS ENSKILDA BANK

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled case on December 4, 1933.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 8–10) is reported in 25 B.T.A. 1328. The opinion of the Court of Appeals of the District of Columbia is reported in 68 F. (2d) 407.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered December 4, 1933

On February 26, 1934, the Chief Justice entered an order granting an extension of time for the filing of a petition for a writ of certiorari for sixty days from March 4, 1934. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether interest paid during 1927 by the United States, pursuant to Section 1116 (a) of the Revenue Act of 1926, to a foreign corporation upon an overpayment of taxes constitutes "income from sources within the United States", within the meaning of Sections 217 and 233 of the Revenue Act of 1926.

STATUTES INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 217. (a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:
>
> (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a

resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable;

* * * * *

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a); * * *. (U.S.C.App., Title 26, Sec. 958.)

SEC. 233. (b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217. (U.S.C.App., Title 26, Sec. 985.)

SEC. 1116 (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of

such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount. (U.S.C.App., Title 26, Sec. 153.)

STATEMENT

During the year 1927, Stockholms Enskilda Bank, a foreign corporation with no place of business in the United States, received from the Treasury of the United States $8,683.91 as interest upon an overpayment of Federal income and excess-profits taxes (R. 8). The Commissioner included this sum in the Bank's gross income for the year 1927, and determined a deficiency of $1,172.32 (R. 4–5). Appeal was taken to the Board of Tax Appeals where it was held that the United States is not a "resident" within the meaning of Section 217 (a) (1) of the Revenue Act of 1926, and therefore interest upon its obligations is not to be included in the gross income of a foreign corporation (R. 8–10). The Commissioner appealed to the Court of Appeals of the District of Columbia (R. 11–13), where the decision of the Board of Tax Appeals was affirmed.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals of the District of Columbia erred—

(1) In holding that the interest paid to the respondent upon the overpayment of its taxes did not constitute "income from sources within the United States", within the meaning of Sections 217 and 233 of the Revenue Act of 1926.

(2) In sustaining the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

The decision below is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit, entered March 5, 1934, in *Helvering* v. *British-American Tobacco Co., Ltd.*, not officially reported, but printed in full as an appendix to this petition (*infra*, p. 6). The conflict is expressly recognized in the opinion in that case (see p. 9, *infra*).

The question presented is of general importance and one which, in view of the conflict, should be settled by a decision of this Court.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

MARCH 1934.

APPENDIX

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE *v.* BRITISH-AMERICAN TOBACCO COMPANY, LTD.

Opinion of the Circuit Court of Appeals for the Second Circuit, March 5, 1934

Petition by the Commissioner of Internal Revenue to review a judgment of the Board of Tax Appeals (27 B.T.A. 226). The Commissioner appeals. Judgment reversed.

Manton, Circuit Judge:

This is a petition to review a judgment entered against the Commissioner by the Board of Tax Appeals. It determined that there was no deficiency with respect to income taxes of the respondent for the years 1925 and 1926. The question presented is whether the respondent was subject to a corporation tax, with respect to interest paid to it by the government in the years 1925 and 1926, upon refunds of income and profit taxes, illegally assessed against it, in the calendar years 1917, 1918, and 1919. The interest received was $12,600.20 in 1925 and $182,832 in 1926. The overpayments were $1,394,357.64.

The corporation reported these amounts on its tax returns for the years 1925 and 1926 as nontaxable income. Therefore, was the interest paid during 1925 and 1926, by the government, to the respondent upon the overpayments of taxes, income from sources within the United States, within

the meaning of § 217 and 233 of the Revenue Act of 1926? (c. 27, 44 Stat. 9.)

Section 1019 of the Revenue Act of 1924 (c. 234, 43 Stat. 346) provides for the payment of interest at 6% on the allowance of a credit or refund of any tax erroneously collected. The Revenue Act of 1926 (c. 27, § 217 [a] 44 Stat. 30) provides:

"In the case of a nonresident alien individual * * * the following items of gross income shall be treated as income from sources within the United States:

"(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business, paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States * * *."

Section 217 (c) provides:

" The following items of gross income shall be treated as income other than that derived from sources within the United States as provided in para. (1) of subdiv. (a)."

Section 233 (b), 44 Stat. 41, provides:

"In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in § 217."

The plan of the Revenue Act indicates that the income of foreign corporations is divided into two groups—(a) that derived from sources within the United States and (b) that received from sources without the United States. The interest here in-

volved was derived from sources within the United States.

But it is argued, by the respondent, that not all such interest derived from such sources is taxable but only the interest of the types of obligation defined by the statute. It is said that the statute must be strictly construed and on the analogy of decisions limiting the application of the word "obligations" in § 213 (*U.S. Trust Co.* v. *Anderson*, 65 F. (2d) 575 [C.C.A. 2]; *Amer. Viscose Corp.* v. *Commr.*, 56 F. (2d) 1033 [10 Am. Fed. Tax. Rep. 1478] [C.C.A. 3]), it is urged that the same words in § 217 should be held not to include the statutory requirement of interest paid by the United States on refunded taxes. But the meaning given to the word used in one connection is not necessarily the meaning to be attributed to it when employed in other connections. It is a matter of legislative intent, and the legislative history of the two sections is not so nearly identical that Congress may be presumed to have intended the same thing in each. It is a fair inference that § 217 is the broader of the two. In its first form (as § 10 of the Revenue Act of 1916), it was apparently intended to extend the taxing power to situations not thought by the Attorney General (30 Opinions A.G. 455) to be included in the law as it then stood. Its present form, as indicated by the report of the Finance Committee of the Senate (Report No. 275, 67th Congress, 1st Sess. p. 16) is no retreat from that position but rather a qualification and more explicit statement of that extension. We thus have revealed a purpose to enlarge the scope of the statute. It is only in keeping with that purpose to apply the statute to the obligation involved in the instant case.

The term "obligation" includes "any duty imposed by law" (Webster's New International Dictionary), and it is well settled that the popular and accepted import of the words furnishes the

general rule for the interpretation of public laws. *Woolford Realty Co.* v. *Rose,* 286 U.S. 319, 327, 52 S.Ct. 568, 76 L.Ed. 1128 [11 Am. Fed. Tax Rep. 12]; *Old Colony R. Co.* v. *Commr.,* 284 U.S. 552, 560, 52 S.Ct. 211, 76 L.Ed. 484 [10 Am. Fed. Tax Rep. 786].

In *U.S. Trust Co.* v. *Anderson* (*supra*), we held that interest on condemnation awards was taxable as an obligation of a subdivision of a state. There is no substantial difference, in the viewpoint of taxation, between the obligation of a city to pay interest on an award and the obligation of the United States to pay interest on an overpayment of taxes, none of which were exempt later from taxation. In *American Viscose Co.* v. *Commr.* (*supra*), the tax was imposed upon a domestic corporation for interest on refunded taxes.

The question remains as to whether the United States is a resident within the meaning of § 217. The United States is a corporation. *Republica* v. *Sweers,* 1 Dall. 41, 44; *United States* v. *Maurice,* 2 Brock. (U.S.) 96, 109 (per Marshall, J.). As such corporate entity, it must have a corporate residence; that residence must be within the United States.

We are referred to *Helvering* v. *Stockholms Enskilda Bank* (Vol. 1, Prentice-Hall, 1934, ¶ 478), Court of Appeals, District of Columbia, and *State* v. *City of Trenton* (40 N.J.L. 89), as being contrary to this view. The *State* v. *City of Trenton, supra,* turned on the intent of the legislature, declared by the court to be manifest, that the debtor should not be released from taxation unless the tax could be collected from the creditor. The case at bar presents no such question. *Helvering* v. *Stockholms Enskilda Bank, supra,* rests heavily upon the determination of the New Jersey courts. We cannot agree with the prevailing opinion in saying that the United States is not a resident within the meaning of that term as used in ¶ 217.

To be taxable as income, the interest received by the respondent must be regarded as interest on "an obligation of residents, corporate or otherwise." The statute does not declare the resident must be a corporation or an individual. The words are "corporate or otherwise." This language is sufficiently broad to embrace all conceivable entities, be they sovereign, corporate, or individual. There is no difficulty with the conception that a sovereign is within the United States and it is axiomatic to say that a sovereign resides where it is sovereign.

It is unlikely that Congress was more solicitous of the welfare of foreign corporations than of domestic in the collection of taxes, and if it was the intention to regard interest paid to a domestic corporation as income, we think it did not intend to exclude a foreign corporation from the same obligation. No sufficient reason is advanced for exempting a foreign corporation when a domestic corporation is taxed. It has long been Congress' desire to extend income taxes to all forms of taxable income. *Heiner* v. *Colonial Trust Co.*, 275 U.S. 232, 235, 48 S.Ct. 65, 72 L.Ed. 256 [6 Am. Fed. Tax Rep. 7076]; *Irwin* v. *Gavit*, 268 U.S. 161, 166, 45 S.Ct. 475, 69 L.Ed. 897 [5 Am. Fed. Tax Rep. 5380]. And, indeed, it may well be said to be contrary to our nationalistic disposition to tax the one and exempt the other. It would require unmistakable language to carry conviction that Congress contemplated that corporations of foreign countries, doing business in the United States, in competition with domestic corporations and spending their incomes abroad, should be so favored.

By the Revenue Act of 1916 (c. 463, 39 Stat. 756), the legislature not only sought to make the test of taxability of foreign corporations the "source" of the income, but it definitely had in mind the ruling of the Attorney General (30 Opinions A.G. 435) that, under the 1913 Act, a foreign corporation could carry on a business in the United States with-

out being subject to a tax on income derived from stocks and bonds of a domestic corporation doing a domestic business or from obligations secured by mortgages on tangible property within the United States even though such obligations were held by such foreign corporations in the United States. Therefore it included the phrase "including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *." Thus the Congress intended an all inclusive and not restrictive taxation.

The history of the statute here in question indicates a purpose on the part of Congress to extend and make all inclusive taxes upon income or foreign corporations derived from sources within the United States. Interest on an obligation of the United States is from a source within and Congress intended to impose an income tax upon it. As said in *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1, 52 S.Ct. 275, 76 L.Ed. 587 [10 Am. Fed. Tax Rep. 800], the expression should be construed "so as to achieve and not to defeat, its (the legislature's) aim." Congress exempted from the normal tax all interest received from obligations of the United States, incurred in the borrowing of money but made a certain class thereof subject to the surtaxes and war and excess profits taxes.

A review of the history of § 236 of the Revenue Act of 1926, c. 27 (44 Stat. 43) here considered, discloses that it was enacted and reenacted as a part of § 213 and that at no time has it been considered or treated as part of § 217. It had its origin in the Revenue Act of 1918, c. 18 (40 Stat. 105). As to individuals, § 210 imposed a normal tax and § 211 imposed a surtax, while § 230 imposed a normal tax and § 301 imposed a war and excess-profits tax upon corporations. Section 213 defined the gross income of individuals and § 233 made § 213 applicable to corporations. Subdiv. b of § 213, it will be observed, does not exclude from gross income interest upon all obligations of the United States in-

curred in the borrowing of moneys. Relating to the tax upon individuals, § 216 provided that for the purpose of normal tax only there should be allowed credits (b) "The amount received as interest upon obligations of the United States * * * which is included in gross income under § 213." Section 236 contained a similar provision with respect to normal tax upon corporations. Thus there was exempted by Congress, both as to individuals and corporations, from the normal tax, all interest received from obligations of the United States incurred in the borrowing of money, but it made a certain class thereof subject to surtax and war and profits taxes. War and profits taxes were carried forward in the Revenue Act of 1921, § 301, c. 136 (42 Stat. 272) for the year 1921 only, and §§ 213, 216, and 236 were carried forward without substantial change. The war and excess-profits tax was in effect for the year 1921 and no longer. The provisions of §§ 213, 216, and 236 were without limitation and were subsequently carried forward into the Revenue Act of 1924, c. 234 (43 Stat. 253) and 1926. So far as corporations are concerned, §§ 213, 233, and 217 of the 1924–1926 Acts includes in "gross income" interest upon certain of the bonds of the United States issued in the borrowing of money, and § 236 takes it out. Congress, we think, used the word "obligations" in § 236 in reference to those obligations the interest upon which it specifically included in gross income.

The history of this taxation statute warrants the approval of construction which results in consistency and which should be accepted, making this, a foreign corporation, taxable as a domestic corporation has been held to be taxable. *American Viscose Corp.* v. *Commr., supra.*

Judgment reversed.

U. S. GOVERNMENT PRINTING OFFICE: 1934

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 10

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

STOCKHOLMS ENSKILDA BANK

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 8) is reported in 25 B.T.A. 1328. The opinion of the Court of Appeals of the District of Columbia (R. 19) is reported in 68 F. (2d) 407.

JURISDICTION

The judgment below was entered December 4, 1933. (R. 22.) On February 27, 1934, the Chief Justice entered an order granting an extension of time for the filing of a petition for a writ of cer-

tiorari for sixty days from March 4, 1934 (R. 23). The petition for a writ of certiorari was filed March 24, 1934, and was granted April 30, 1934. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether interest paid during 1927 by the United States to a foreign corporation on a refund of taxes, pursuant to Section 1116 (a) of the Revenue Act of 1926, constitutes interest on an interest-bearing obligation of a resident, corporate or otherwise, within the meaning of Section 217 (a) (1) of the Revenue Act of 1926, made applicable in determining the gross income of a foreign corporation derived from sources within the United States by Section 233 (b) of that Act.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra,* pp. 28–35.

STATEMENT

The facts are undisputed. As stated in the opinion of the Board of Tax Appeals, they are as follows (R. 8):

The respondent is a foreign corporation, organized and existing under the laws of the Kingdom of Sweden, with its principal office in that country. It has no office or place of business in the United

States. During the year 1927 the respondent received from the United States Government the sum of $8,683.91 as interest on a refund of Federal income taxes which had been overpaid for a prior year. The Commissioner of Internal Revenue increased the respondent's income for the year 1927 by including therein the interest on the refund, and on account of such increase determined a deficiency in the sum of $1,173.32. (See R. 4–5.) The respondent thereupon appealed to the Board of Tax Appeals (R. 2–3). That Board held that while the interest on the refund was interest on an interest-bearing obligation of the United States, the United States is not a "resident" within the meaning of Section 217 (a) (1) of the Revenue Act of 1926 which, taken in connection with Section 233 (b) of that Act, permits the inclusion in the gross income of a foreign corporation of "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise." It therefore ruled that the Commissioner erred in including the interest on the refund in the respondent's gross income for the year 1927. (R. 8–11.) The Commissioner appealed to the Court of Appeals of the District of Columbia (R. 12–13), which affirmed the decision of the Board upon the same ground, one judge dissenting (R. 19–22).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals of the District of Columbia erred—

(1) In holding that the interest paid by the United States to the respondent upon the overpayment of its income taxes did not constitute interest on an interest-bearing obligation of a resident, corporate or otherwise, within the meaning of Section 217 (a) (1) of the Revenue Act of 1926, made applicable in determining the gross income of a foreign corporation derived from sources within the United States by Section 233 (b) of that Act.

(2) In sustaining the decision of the Board of Tax Appeals.

SUMMARY OF ARGUMENT

Section 233 (b) of the Revenue Act of 1926 provides that "In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217." Section 217 (a) (1) includes in the items of gross income to be treated as income from sources within the United States, "Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise."

Section 217 when considered as a whole and in the light of its legislative history discloses a purpose on the part of Congress to tax all income received by a foreign corporation from sources within the United States except that expressly exempted. Interest upon an overpayment of Federal taxes is clearly income from a source within the United States. To accomplish the legislative purpose Sec-

tion 217 (a) (1) should be so construed as to require the inclusion in gross income of such interest when paid to a foreign corporation if the language of the section permits it. The language is sufficiently broad to achieve the Congressional aim. A contrary construction of the section would result in preferring the foreign corporation over the domestic corporation.

ARGUMENT

Section 3220 of the Revised Statutes, as amended by Section 1111 of the Revenue Act of 1926 (*infra*, p. 34), authorizes the Commissioner of Internal Revenue to "remit, refund, and pay back all taxes erroneously or illegally assessed or collected." Section 284 (a) of the Revenue Act of 1926 (*infra*, p. 33) provides that where there has been an overpayment of any income tax imposed under a prior revenue law "the amount of such overpayment shall * * * be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer." Section 1116 (a) of the Revenue Act of 1926 (*infra*, p. 34) provides for the payment of interest at 6 percent upon the allowance of a credit or refund of any tax erroneously collected.

Pursuant to these statutes the United States refunded an overpayment of income tax made by the respondent some time prior to 1927. During 1927

the United States paid the respondent as interest on this refund the sum of $8,683.91. The question presented is whether this interest should be treated as a part of the respondent's gross income for the purpose of computing its income tax for 1927.

Section 233 (b) of the Revenue Act of 1926 (*infra*, p. 33), provides:

> In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217.

Section 217 (a) (1) (*infra*, p. 29) provides:

> In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:
>
> (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *.

Section 217 (c) (1) provides that:

> The following items of gross income shall be treated as income from sources without the United States:
>
> (1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a).

The Board of Tax Appeals held that the interest on the refund of taxes made to the respondent, although interest on an interest-bearing obligation of the United States was not interest on an interest-

bearing obligation of a "resident, corporate, or otherwise", because the United States was not a "resident" within the meaning of Section 217 (a) (1). The court below affirmed the decision of the Board upon the same ground. In the later case of *British-American Tobacco Co.* v. *Helvering, Commissioner,* involving the same question, which is now pending in this Court upon writ of certiorari (No. 24) and which is set for hearing with the instant case, while the Board reaffirmed its ruling in the present case (No. 24, R. 16), three members dissented, two of them writing opinions (No. 24, R. 17–24). One of the majority concurred in the result without writing an opinion (No. 24, R. 16), and another of the majority wrote a concurring opinion with which another of the majority agreed (No. 24, R. 16–17). In this concurring opinion the member disagreed with the Board in its holding that the Government of the United States was not a "resident" within the meaning of Section 217 (a) (1), but was of the opinion that as a refund of illegal taxes was not an "obligation of the United States" within the meaning of another provision of the Revenue Act of 1926, to which reference later will be made, it could not be considered such an "obligation" of the United States, even though the latter be deemed a "resident", as brought it within the scope of Section 217 (a) (1). Upon appeal the Circuit Court of Appeals for the

Second Circuit unanimously reversed the decision of the Board (No. 22, R. 32–38).

We believe that a careful analysis of Section 217, particularly when considered in the light of its legislative history, will disclose that the decision of the Circuit Court of Appeals for the Second Circuit was correct and that the decisions of the court below and the Board of Tax Appeals were incorrect. The pertinent portions of Section 217 are copied in the Appendix (*infra,* pp. 29–33). It will be observed that Congress in this section (made applicable in determining the gross income of a foreign corporation by Section 233 (b)) has divided the gross income of a foreign corporation into two groups, income from sources within the United States and income from sources without the United States. The items of gross income which are treated as income from sources within the United States are enumerated in subdivisions (a) and (e). Briefly stated they are, insofar as applicable to a foreign corporation rather than a nonresident alien individual, the class of taxpayers with which the section was primarily concerned: (1) interest on bonds, notes, or other interest-bearing obligations of a resident, corporate or otherwise; (2) amounts received as dividends from certain domestic corporations and from certain foreign corporations deriving a certain percentage of their income from sources within the United States; (3) "compensation for labor or personal serv-

ices performed in the United States", insofar, of course, as that phrase can be applied to a corporation; (4) rentals or royalties from property located in the United States; (5) gains and profits from the sale of real property located in the United States (subdivision (a)); and (6) items of gross income other than those specified in subdivisions (a) and (c), provision being made for the allocation of the income to sources within or without the United States under regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury (subdivision (e)).[1] Considering these provisions as a whole, it is evident that Congress attempted to make a comprehensive statement of the various items of gross income which it was likely that a foreign corporation might derive from sources within the United States. That it intended this enumeration to be all-embracing is evident from the fact that where it desired to exclude from gross income items of income which normally would be considered as derived, either in whole or in part, from sources within the United States, it expressly

[1] It is evident from a reading of subdivision (e) that this subdivision covers items of income in respect of which difficulty is encountered in determining the proportion of the income which should be allocated to sources within the United States and the proportion which should be allocated ~~to sources without the United States, i.e., profit from trans-~~ to sources without the United States, i.e., profit from transportation or other services performed partly within and partly without the United States; profit from the sale of goods produced within and sold without the United States, etc.

said so. Thus, it said in subdivision (a) that interest on bonds, notes, or other interest-bearing obligations of a resident should not include interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having a place of business therein, or interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation where it appears that the resident payor or the domestic corporation has derived less than 20% of its income from sources within the United States during the preceding three-year period, etc. Subdivision (c) (*infra,* p. 31), upon which the respondent relies, neither adds to nor detracts from the scope of the other provisions of the section. It is obviously complementary to subdivision (a) and merely says, in effect, that that which subdivision (a) does not include as gross income derived from sources within the United States shall be treated as coming from sources without the United States and therefore excluded from gross income.

From the very face of the section we think it is evident that it was the intent of Congress to require a foreign corporation to include in its gross income all items of income derived from sources within the United States unless excluded by express language. That such was the intent of Congress is made further manifest when the legislative history of the section is considered.

The Tariff Act of October 3, 1913, c. 16, 38 Stat. 114, 172, provided in Section II G (a) for the levy of a tax upon the net income of foreign corporations, the same to include "the amount of net income accruing from business transacted and capital invested within the United States during such year." In response to a question from the Secretary of the Treasury on August 24, 1915, the Attorney General held (30 Op.A.G. 435) that under the Act of 1913 a foreign corporation was exempt from tax on income derived from stocks or bonds of domestic corporations doing a domestic business, or from obligations secured by mortgages on tangible property within the United States, even though such obligations were held by such foreign corporation in the United States.

The Revenue Act of 1916, c. 463, 39 Stat. 756, 765, enacted September 8, 1916, sought to correct this situation. Section 10 of that Act provided that

> a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year *from all sources within the United States* by every corporation * * * authorized, or existing under the laws of any foreign country, *including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.* * * *. (Italics ours.)

It will at once be seen that in the 1916 Act Congress not only sought to make the test of taxability

of foreign corporations the "source" of the income,[2] but it definitely had in mind the ruling of the Attorney General, *supra,* and therefore specifically inserted the phrase "including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise." It is evident, therefore, that this last phrase was not intended in any wise to restrict the scope of the section. Its primary purpose was patently a precautionary one of insuring that this type of income, received unquestionably from a source within the United States, should not in the future be held to be excluded from taxable income.

The provisions of Section 10 of the Revenue Act of 1916 were carried forward without substantial change into Section 233 (b) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1077.

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[2] In Holmes, Federal Taxes, 6th ed., Sec. 204, p. 397, it is said:

"The intention of Congress in the 1916 and subsequent statutes seems to have been to discard the 1909 and 1913 basis of taxing nonresident aliens and foreign corporations and to make the test of taxability the "source" or situs of the activities or property which produce the income or from which it is desired [derived]. The result is that, on the one hand, nonresident alien and foreign corporations are prevented from deriving income from the United States free from tax by virtue of a technical construction of the phrase, "property owned * * * and * * * business, trade or profession carried on" and the phrase "business transacted and capital invested"; and, on the other hand, there is no undue imposition of a tax when the activities and property producing the income do not take place or is not employed in this country."

In enacting this legislation, Congress undoubtedly thought that it was laying the foundation for taxing all income derived *from sources within the United States.* However, subsequent to the enactment of the 1918 Act, difficult administrative questions began to arise. On August 12, 1920, the Secretary of the Treasury submitted to the Attorney General several questions with reference to the source from which certain designated incomes had been derived. In an opinion dated November 3, 1920, the Attorney General, among other things, held (32 Op. A. G. 336):

> (1) That a foreign corporation partially manufacturing articles in this country, shipping them to England, finishing them and selling them there, derived no income from sources within the United States, within the meaning of the above Acts;
>
> (2) That income accruing to a foreign corporation from the purchase of logs in this country and their sale abroad did not constitute income from sources within the United States;
>
> (3) That income derived by a foreign corporation from the purchase of goods abroad and their sale in the United States through the medium of a New York corporation constituted income derived from sources within the United States; and
>
> (4) That income derived by a foreign steamship company from the transportation of freight and passengers from the United

> States to foreign ports constitutes income derived from sources within the United States.

This ruling brought forth many protests, with the result that Congress sought to remedy the situation. Hence, when H.R 8245, which later became the Revenue Act of 1921, c. 136, 42 Stat. 227, was being considered, the definition of gross income, so far as it related to foreign corporations, was incorporated in Sections 217 and 233 in the form subsequently carried forward into the Revenue Acts of 1924 (c. 234, 43 Stat. 253) and 1926. As to the Congressional purpose in making the change from the provisions of Section 233 (b) of the Revenue Act of 1918, the Committee on Finance of the Senate, in Report No. 275, 67th Cong., 1st Sess., p. 16, said:

> Section 217 states explicit rules—applicable principally to nonresident aliens and foreign traders—for computing the net income derived from sources within the United States. The present law is both obscure and economically unsound, inasmuch as the Attorney General has held that where goods are manufactured or produced in the United States and sold abroad, no part of the profit is derived from a source within the United States This section explicitly allocates certain important sources of income to the United States or to foreign countries, as the case may be, and with respect to the remaining income (particularly

> that derived partly from sources within and partly from sources without the United States) authorizes the commissioner, with the approval of the Secretary, to determine the income derived from sources within the United States either by rules of separate allocation or by processes or formulas of general apportionment.

Thus it will be seen that the history of the statute involved clearly indicates a purpose on the part of Congress to extend and make all-inclusive taxes upon the income of foreign corporations *derived from sources within the United States.* By making a comprehensive specification of the various items of income which a foreign corporation would normally derive from sources within the United States, Congress evidently thought that it could better accomplish its purpose and avoid the disputes which had arisen in the past through the use of general language. Congress certainly had no idea that it was not covering the whole field, for, as we have heretofore pointed out, where it desired for some reason to exclude a particular item of gross income which would otherwise normally have been deemed to have come from a source within the United States, it excluded such item from gross income by express language.

There can be no question from the standpoint of logic and of fact that interest paid by the United States Government to a foreign corporation upon a refund of taxes comes from a source within the

United States. The statute and its legislative history manifest the purpose of Congress to include all forms of income derived from sources within this country, unless expressly exempted. It has been held that interest on a tax refund when paid to an American corporation is not exempt under other provisions of the statute. *American Viscose Corporation* v. *Commissioner,* 56 F. (2d) 1033 (C.C.A. 3d), certiorari denied, 287 U.S. 615. To attribute to Congress the purpose to exempt similar income when paid to a foreign corporation is not only contrary to the recognized Congressional disposition to extend income taxes to all forms of taxable income (*Eisner* v. *Macomber,* 252 U.S. 189, 203; *Irwin* v. *Gavit,* 268 U.S. 161, 166; *Heiner* v. *Colonial Trust Co.,* 275 U.S. 232, 235), but also to the general nationalistic disposition to favor domestic corporations which expend their incomes in the United States.[3] Taxation being the rule and exemption the exception, any doubt is to be resolved in favor of taxation. *Bank of Commerce* v. *Tennessee,* 161 U.S. 134, 146; *Heiner* v. *Colonial Trust Co., supra; United States Trust Co. of New York* v. *Anderson,* 65 F. (2d) 575, 577 (C.C.A. 2d), certiorari denied, 290 U.S. 683. Except in the presence of clear and unmistakable language, it is hardly conceivable that Congress intended that the foreign

[3] For evidence of this disposition see the history of the Act of August 5, 1861, c. 45, 12 Stat. 292, 309, Sec. 49, as set forth in 30 Op.A.G. 437.

corporation should be favored over the domestic corporation, particularly where, as in the *British-American Tobacco* case, the foreign corporation is engaged in active competition in this country with American industry.

As is apparent from the face of the statute and its legislative history, the aim of the statute was to cover all forms of income accruing to a foreign corporation from sources within this country unless expressly exempted. The statute should accordingly be so construed "as to achieve, and not defeat, its aim." *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1, 7. Interest on a refund of Federal taxes is undoubtedly income arising from a source within the United States. There is apparent no logical reason for exempting such interest and it should be included in the gross income of the foreign corporation if the words of the statute, reasonably construed in the light of its manifest purpose, permit it. Section 217 (a) (1) provides that the following item of the gross income of a foreign corporation shall be treated as income coming from a source within the United States: "Interest on bonds, notes, or other interest-bearing obligations of a resident, corporate or otherwise." There can be little question that the interest received on a tax refund is interest on an interest-bearing obligation of the United States. In fact, only one of the various opinions in this and the *British-American Tobacco Co.* case questioned this, and that opinion was

influenced by the interpretation which had been given by one of the Circuit Courts of Appeals to the phrase "obligations of the United States" as used in another section of the Act, where, however, as will be explained later, the phrase was obviously employed as referring to obligations of the United States incurred in the borrowing of money. Section 284 (a) of the Revenue Act of 1926 (*infra*, p. 33) and Section 3220 of the Revised Statutes, as amended by Section 1111 of the Revenue Act of 1926 (*infra*, p. 34) make it the duty of the Commissioner of Internal Revenue to refund all taxes erroneously or illegally collected. That this statutory requirement constitutes an "obligation" of the United States within the ordinary meaning of that term is apparent. Webster's New International Dictionary defines the term "obligation" as including "any duty imposed by law." It is well settled that the popular and accepted import of words furnishes the general rule for the interpretation of public laws (*Woolford Realty Co.* v. *Rose*, 286 U.S. 319, 327; *Old Colony R. Co.* v. *Commissioner*, 284 U.S. 552, 560) unless it is clear that Congress used the word in a narrower sense (*United States* v. *First National Bank*, 234 U.S. 245, 258). The purpose of the section, as reflected in its terms and in its legislative history, refutes the idea that Congress intended that the word "obligations" should be used in a narrow sense.

While it is contended in the brief in opposition to the Government's petition in this case that the word "obligations" should be limited to obligations generically similar to bonds and notes, pursuant to the doctrine of *ejusdem generis,* the very language of the section discloses that this doctrine cannot be applied. After providing that there shall be included in the gross income of the foreign corporation interest on bonds, notes, or other interest-bearing obligations of a resident, the section specifically states that this interest shall not include "(A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein." It is obvious, as was held by the Board of Tax Appeals (R. 10), that Congress thought that "interest on deposits" with persons carrying on a banking business would have been included among "other interest-bearing obligations" had it not been specifically excluded, for otherwise there would have been no reason for the exclusion. *United States* v. *Woodward,* 256 U.S. 632, 634; *Brown* v. *Maryland,* 12 Wheat. 419, 438. Manifestly, "interest on deposits" is no more of a kind generically similar to bonds and notes than is interest on a statutory obligation of the United States.

If, as we contend, the doctrine of *ejusdem generis* does not apply, there obviously is no foundation for the further contention of the respondent

that the word "obligations" is confined to contractual as contrasted with statutory obligations. There is not a word in the section which leads to any such inference, and such a construction would be contrary to the manifest purpose of the statute.

If, as seems clear, the statutory duty and undertaking of the United States to refund an overpayment of income taxes is an "obligation" within the meaning of Section 217 (a) (1), there certainly can be no question that it is an "interest-bearing obligation." Section 1116 (a) of the Revenue Act of 1926 (*infra*, p. 34) specifically provides that interest shall be allowed at the rate of 6 per centum per annum on a refund of taxes from the date the taxes are paid to the date of the allowance of the refund.

We pass, then, to the only question as to which there was any serious controversy below either in the instant case or in the *British-American Tobacco Co.* case. Section 217 (a) (1) requires that the obligation shall be that of a "resident, corporate or otherwise." The Board of Tax Appeals in the instant case and in the *British-American Tobacco Co.* case and the court below in the instant case held that the United States could not be considered as a "resident" within the meaning of the section. The Circuit Court of Appeals for the Second Circuit in the *British-American Tobacco Co.* case, as well as five of the members of the Board of Tax Appeals, entertained a contrary view. Having in

mind the aim of Section 217 to include within its ambit all of the income of a foreign corporation derived from sources within this country unless expressly excepted, we submit that it is a permissible construction to hold that the United States is a "resident" within the meaning of the section. The section extends without qualification to corporate "residents", as well as individual residents. The language is sufficiently broad, as was said by the Circuit Court of Appeals for the Second Circuit in the *British-American Tobacco Co.* case, "to embrace all conceivable entities, be they sovereign, corporate, or individual." (No. 24, R. 35.) That the United States is a corporation can hardly be disputed. *United States* v. *Maurice*, 2 Brock. (U.S.) 96, 109 (per Marshal, C.J.); *Respublica* v. *Sweers*, 1 Dall. 41, 44. As was said by this Court in *Van Brocklin* v. *Tennessee*, 117 U.S. 151, 154, quoting from the language of Chief Justice Marshall in the *Maurice* case:

> The United States is a government, and consequently a body politic and corporate, capable of attaining the objects for which it was created, by the means which are necessary for their attainment. This great corporation was ordained and established by the American people, and endowed by them with great powers for important purposes. * * *

SEE ALSO OHIO v. HELVERING, 292 U.S. 360, 370.

As a corporate entity, the United States obviously must have a corporate residence somewhere.

While it cannot be said to reside at any particular place within its boundaries, being ubiquitous its corporate residence is obviously coterminous with its territorial limits. Cf. *United States* v. *Borcherling,* 185 U.S. 223, 233; *Mackey* v. *Coxe,* 18 How. 100, 105; *Wyman* v. *Halstead,* 109 U.S. 654. "If," as was said by one of the members of the Board of Tax Appeals in the *British-American Tobacco Co.* case, "the United States is not a 'resident' of the United States within the contemplation of the statute, of what country is it a 'resident'?" (No. 24, R. 19.) There can be no question that a sovereign resides where it is sovereign.

The only court decision upon which the court below relied in holding that the United States could not be considered a "resident" within the meaning of Section 217 is *State* v. *City of Trenton,* 40 N.J.L. 89. We do not think that that decision when properly analyzed supports the court's conclusion. Indeed, it applied the rule of construction which we believe is the proper one to apply in the present case. The law of New Jersey provided for the taxation of all real and personal property at its full and actual value, but allowed a deduction of debts due and owing to "creditors *residing* within the state." (Italics ours.) The taxpayer sought to deduct a debt owing to the State of New Jersey, and the question presented was whether the State was a *resident.* The court held that since the taxpayer was seeking an exemption from taxation a strict construction was required, and that, looking

to the purpose of the legislature in passing the law, it was clear that it intended to allow a deduction of a debt only where the person to whom the debt was owing would be required to include such debt in his personal property for the purpose of taxation. The court said (p. 92):

> If it was the intention to exempt the borrower of state funds from taxation to the amount of his loan, and withdraw from the taxable property of the state the large sum represented by the school fund, there should have been some clear expression of such purpose, and it should not be left to doubtful interpretation. When money passes out of the state treasury into the hands of a citizen, it loses its immunity from taxation as public funds, and becomes assessable as individual property, unless expressly exempted. The bonds and mortgages representing these funds are held by public officers as public property, and are not liable to taxation. Neither in the words used in this act nor in its reason, do I find the unambiguous expression which is required to exempt property from the burden of general taxation.

It is evident that the State court in this case did exactly what we contend the court below should have done—it first inquired into the primary purpose of the statute and then proceeded to interpret and apply its provisions in the light of the underlying purpose. Instead, the court below in the instant case gave no consideration to the purpose of the statute involved and resorted to a rule of strict con-

struction which had the effect of thwarting the intent of Congress as manifested not only in the statute itself but through its legislative history.

In reaching its decision the court below was, as is evident from its opinion, influenced to a considerable extent by the injustice which it seemed to think would result if the tax were sustained. After pointing out that "the payment in question represented interest which the Government was paying as provided by statute because of an overassessment of income taxes theretofore imposed by the Government upon the taxpayer," the court said that "To assess income taxes upon such a repayment would amount to the imposition of a penalty upon the taxpayer because of the error theretofore committed by the Government against him" (R. 21). As we have heretofore pointed out, a domestic corporation is not exempt from the payment of an income tax upon interest received on a refund of Federal taxes (*supra*, p. 16), and it is hardly likely that Congress would be more solicitous of the welfare of the foreign corporation, which uses its income abroad, than it would be of the domestic corporation, which spends its money in this country. There is no conceivable reason, so far as we can see, why Congress should have desired in the case of a foreign corporation to add to the high rate of interest allowed on tax refunds (6%).[4] Moreover,

[4] Allowed by Section 1324 (a) of the Revenue Act of 1921, Sections 1019 of the 1924 Act, and 1116 (a) of the Revenue Act of 1926.

the alleged injustice which the court feared would result from the taxation of interest on tax refunds made to foreign corporations is largely minimized when we consider some of the evils which might flow from a contrary decision. As was pointed out by one of the dissenting members of the Board of Tax Appeals in the *British-American Tobacco Co.* case (No. 24, R. 23–24):

> The possibilities of a tax-free yield of 6 percent to foreign corporations and nonresident aliens, which the decision in the Stockholms Bank case opens up, will not be overlooked, particularly by resident foreign corporations. Under our system of self-assessment, there is nothing to prevent such corporations from including in the return of income and paying income tax on items of foreign income or, even for that matter, tax-exempt income from United States sources, such as interest on Liberty Bonds and municipal bonds, knowing full well that a claim for refund filed within the statutory period, two years, based on the erroneous inclusion in gross income of items of income from sources without the United States and items of tax-exempt income, will be allowed and that the amount of such refund will draw interest at the rate of 6 percent from the date the tax was paid to the date of the allowance. The statute does not now require that the tax be paid under protest in order to obtain a refund.

It has been suggested that if it should be held that interest on a refund to a foreign corporation of

Federal taxes may be considered as interest on an "obligation" within the meaning of Section 217 (a) (1), the dilemma will be presented that the effect of such a decision will be to exempt this interest from taxation under Sections 213 (b) (4) (*infra,* p. 28) and 236 (a) (*infra,* p. 33). The dilemma is, we submit, purely mythical. The legislative history showing the relationship between the two sections is set forth at length in the opinion of the Circuit Court of Appeals in the *British-American Tobacco Co.* case and, therefore, need not be here repeated (No. 24, R. 37). A mere glance at Section 213 (b) (4) will disclose that it was the intention of Congress in the sections in question to deal only with obligations of the ~~State and~~ Federal Governments incurred in the borrowing of money. As was said by the Circuit Court of Appeals for the Third Circuit in the *American Viscose* case, *supra* (56 F. (2d) 1034), in holding that interest on a tax refund made to a domestic corporation was not exempted from taxation by Section 213 (b) (4):

> The exemptions of Congress were evidently meant to aid in the flotation of government bonds and securities by making them tax free and, therefore, more attractive to investors.

See also *United States Trust Co. of New York* v. *Anderson,* 65 F. (2d) 575 (C.C.A. 2d), a decision by the same Circuit Court of Appeals which decided the *British-American Tobacco Co.* case.

The meaning to be attributed to a particular word depends, of course, upon the intent with which it was used. In Sections 213 and 236 the legislative history and the language employed disclose that Congress intended that the word "obligations" should be given a narrow, restricted meaning. In the section with which we are concerned, it was the manifest intention of Congress to tax to foreign corporations all income derived from sources within the United States unless expressly excepted. To give to the word "obligations" as there used the limited meaning which was ascribed to it by the court below and by the Board of Tax Appeals is not to achieve but to defeat the aim of Congress.

CONCLUSION

For the reasons stated, we respectfully submit that the judgment below should be reversed.

J. CRAWFORD BIGGS,
Solicitor General.

ANGUS D. MACLEAN,
Assistant Solicitor General.

FRANK J. WIDEMAN,
Assistant Attorney General.

JAMES W. MORRIS,
JOHN H. MCEVERS,
Special Assistants to the Attorney General.

W. MARVIN SMITH,
Attorney.

SEPTEMBER 1934.

APPENDIX

STATUTES INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 2. (a) When used in this Act—

* * * * * * *

(3) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(4) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(U.S.C.App., Title 26, Sec. 1262.)

SEC. 213. For the purposes of this title, except as otherwise provided in section 233—

(a) The term "gross income" includes * * *.

(b) The term "gross income" does not include the following items, which shall be exempt from taxation under this title:

* * * * *

(4) Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the

number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal-savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from income taxes;

* * * * * * *

(U.S.C.App., Title 26, Sec. 954.)

SEC. 217. (a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:

(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment

of such interest, or for such part of such period as may be applicable;

(2) The amount received as dividends (A) from a domestic corporation other than a corporation entitled to the benefits of section 262, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or (B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section;

(3) Compensation for labor or personal services performed in the United States;

(4) Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property; and

(5) Gains, profits, and income from the sale of real property located in the United States.

* * * * *

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a);

(2) Dividends other than those derived from sources within the United States as provided in paragraph (2) of subdivision (a);

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, goodwill, trade marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

* * * * * * *

(e) Items of gross income, expenses, losses and deductions, other than those specified in subdivisions (a) and (c), shall be allocated or apportioned to sources within or without the United States under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be al-

located to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some items or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits, and income from (1) transportation or other services rendered partly within and partly without the United States, or (2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits, and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits, and income derived from the purchase of personal property within the United States and its sale within a possession of the United States or from the purchase of personal property within a possession of the United States

and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

(U.S.C.App., Title 26, Sec. 958.)

SEC. 233. (a) In the case of a corporation subject to the tax imposed by section 230 the term "gross income" means the gross income as defined in sections 213 and 217, except that mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined (except in the case of insurance companies subject to the tax imposed by sections 243 or 246) in the manner provided in section 217.

(U.S.C.App., Title 26, Sec. 985.)

SEC. 236. For the purpose only of the tax imposed by section 230 there shall be allowed the following credits:

(a) The amount received as interest upon obligations of the United States which is included in gross income under section 233; * * *.

(U.S.C.App., Title 26, Sec. 988.)

SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes", approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue

Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

(U.S.C.App., Title 26, Sec. 1065.)

* * * * * * *

SEC. 1111. Section 3220 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3220. Except as otherwise provided in sections 284 and 319 of the Revenue Act of 1926, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit: * * *.

(U.S.C.App., Title 26, Sec. 149.)

SEC. 1116. (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per

annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(U.S.C.App., Title 26, Sec. 153.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

GUY T. HELVERING, Commissioner of Internal Revenue,

Petitioner,

v.

STOCKHOLMS ENSKILDA BANK.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

TRUMAN HENSON,
Attorney for Respondent,
Office and P. O. Address,
26 Liberty Street,
New York, N. Y.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 895.

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,
v.
STOCKHOLMS ENSKILDA BANK.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

Opinions Below.

The opinion of the Board of Tax Appeals (R. 8-10) is reported in 25 B. T. A. 1328. The opinion of the Court of Appeals of the District of Columbia (R. 19-22) is reported in 68 Fed. (2d.) 407.

Jurisdiction.

The judgment of the Court of Appeals of the District of Columbia was entered December 4, 1933. On February 26, 1934, the Chief Justice entered an order granting an extension of time for the filing of a petition for a writ of certiorari for sixty days from March 4, 1934. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether interest paid during 1927 by the United States, pursuant to Section 1116(a) of the Revenue Act of 1926, to a foreign corporation upon a refund of income taxes theretofore overpaid for a prior year, falls within the general rule prescribed by Section 217(c) (1) of the Revenue Act of 1926 that interest paid to a foreign corporation is to be "treated as" income from sources without the United States, or the exception prescribed by Section 217(a) (1) of the Revenue Act of 1926 that "interest on bonds, notes and other interest-bearing obligations of residents, corporate or otherwise", is to be "treated as" income from sources within the United States; and, if such interest falls within such exception, then:

(a) Whether such interest is exempted from tax by Section 213(b) (4) of the Revenue Act of 1926; and if not,

(b) Whether such interest is allowable as a credit against income by virtue of Section 236(a) of the Revenue Act of 1926.

Statutes Involved.

Revenue Act of 1926, c. 27, 44 Stat. 9:

Sec. 230. (a) In lieu of the tax imposed by section 230 of the Revenue Act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation, a tax at the following rates: * * *. (U. S. C. A., Title 26, Section 981 as amended.)

Sec. 232. In the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income as defined in section 233 less the deductions allowed * * *. (U. S. C. A., Title 26, Section 984.)

Sec. 233. (b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined (except in the case of insurance companies subject to the tax imposed by sections 243 or 246) in the manner provided in section 217. (U. S. C. A., Title 26, Section 985.)

Sec. 217. (a) In the case of a nonresident alien individual or of a citizen entitled to the benefits of section 262, the following items of gross income shall be treated as income from sources within the United States:

(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable;

* * * * *

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a); * * *. (U. S. C. A., Title 26, Section 958.)

Sec. 213. For the purposes of this title, except as otherwise provided in section 233—

* * * * *

(b) The term "gross income" does not include the following items, which shall be exempt from taxation under this title:

* * * * *

(4) Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from income taxes; * * *. (U. S. C. A., Title 26, Section 954.)

Sec. 236. For the purpose only of the tax imposed by section 230 there shall be allowed the following credits:

(a) The amount received as interest upon obligations of the United States which is included in gross income under section 233; * * *. (U. S. C. A., Title 26, Section 988.)

Sec. 1116. (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount. (U. S. C. App., Title 26, Sec. 153.)

Statement.

During the year 1927, Stockholms Enskilda Bank, a foreign corporation with no office or place of business in the United States, received from the Treasury of the United States $8,683.91 as interest upon an overpayment of Federal income taxes (R. 8). The Commissioner included this sum in the Bank's gross income for the year 1927, and determined a deficiency of $1,172.32 (R. 4-5). Appeal was taken to the Board of Tax Appeals where it was held that such interest is not within the definition of income to be "treated as" from sources within the United States and consequently not to be included in the gross income of a foreign corporation (R. 8-10). The Commissioner appealed to the Court of Appeals of the District of Columbia (R. 11-13), where the decision of the Board of Tax Appeals was affirmed.

ARGUMENT.

I.

The question presented is not whether this interest was derived from sources within the United States, but only whether such interest falls within the general rule of non-taxability prescribed by Sec. 217(c) (1) or the exception thereto provided in Sec. 217(a) (1).

In the view of the respondent, neither the Court of Appeals of the District of Columbia nor the United States Board of Tax Appeals held that the interest paid to the respondent upon the overpayment of its taxes did not constitute income from sources within the United States. Under the provisions of the applicable Revenue Act, the place from which the interest emanated was not important. What was decided was that the interest did not fall within the compass of the definition, contained in Section 217(a)(1) of the Revenue Act of 1926, of interest to be "treated as" income from sources within the United States, but, rather, fell within the scope of Sec. 217(c)(1), which provides that interest other than that within the definition of Sec. 217(a)(1) "shall be treated as" from sources without the United States.

In consequence, it is the respondent's contention that not only is the question presented not clearly stated in the petition, but also the first specification of error, if not actually without foundation, is at least inaccurately phrased.

The distinction noted is fundamental. If the criterion of taxability established by the Revenue Act of 1926 were the fact of the source of the income, an entirely different situation would present. Under the Revenue Act of 1918 and the preceding Revenue Acts, income was taxable, or not taxable, to a foreign taxpayer depending upon its source. At the time of the enactment of the Revenue Act of 1921, however, after very full

discussion, and in consideration of the many difficulties encountered in determining the true source of many classes of income, the Congress decided to abandon the fact of the source of income, as the criterion of its taxability, and to substitute in lieu thereof a system of definitions of various classes of income to be "treated as" from sources within or without the United States.[1]

This new criterion established by the 1921 Act was carried forward into the 1924 and 1926 Acts, and has been continued substantially unchanged down to and including the current Revenue Act. The Revenue Act of 1926, which is the statute under consideration, provides, in Section 217(a)(1), that "interest on bonds, notes, or other interst-bearing obligations of residents, corporate or otherwise" shall be treated as income from sources within the United States; and, in Section 217(c)(1), that other interest "shall be treated as income from sources without the United States". In its opinion, the Board of Tax Appeals expressly recognized the real question in these words: (R. 9) "It is at once apparent that all interest, even though concededly from sources within the United States, is not to be treated as interest from sources within the United States, for subdivision (c)(1) of Section 217 provides that interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a) shall be treated as income from sources without the United States. Therefore to constitute gross income from sources within the United States the interest herein must be brought within the provisions of said paragraph (1) of subdivision (a)."

The Court of Appeals of the District of Columbia also recognized the true question, for, although it did say (R. 20) that the Board had held the interest not to be

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[1] The pertinent provisions of the Revenue Acts of 1913, 1916, 1918 and 1921, together with extracts from the Congressional Reports on the Revenue Act of 1921 are printed as an appendix to this brief (*infra*, p. 15).

"'income from sources within the United States' as defined by Section 217", it also stated (R. 21) "* * * the amount of interest * * * would be taxable * * * only in case the payment came within the classification of 'Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *'".

The question presented, then, is merely one of statutory construction: Whether interest paid by the United States upon a refund of taxes falls within the explicit terms of the definition contained in Section 217(a)(1).

II.

The decision of the Court below appears to be correct.

If from a consideration that words in a statute should be given their commonly understood meanings, it be held that this "interest" was interest at all, rather than merely damages for the unlawful retention of money, nevertheless a strict construction should be applied to the definition contained in Section 217(a)(1), for that subsection expresses an exception to the general rule laid down in Section 217(c)(1). An exception to a general rule includes only what its plain language embraces, must not be extended by implication, the expression of one exception excludes all others, and all doubts must be resolved in favor of the general rule.

> *Bend* v. *Hoyt*, 13 Pet. 263; 271, 272, 273;
> *Spokane & Inland R. Co.* v. *U. S.*, 241 U. S. 344; 350.

In addition, as this Court has often stated, a doubt in a taxing statute must be resolved in favor of the taxpayer.

> *United States* v. *Merriam*, 263 U. S. 179; 187, 188;
> *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339; 348;
> *Burnet* v. *Niagara Falls Brewing Co.*, 282 U. S. 648; 654.

But without the benefit of the rules of strict construction referred to, this interest does not fall within the ambit of the definition contained in Section 217(a)(1). To be taxable to a foreign corporation, interest must be on a bond, note or other interest-bearing obligation; and further, such bond, note or other interest-bearing obligation, must be that of a resident, corporate or otherwise. As respondent contends, the interest here in question fulfills neither of these requirements.

By the familiar rule of *ejusdem generis*, the word "obligation" should be confined in its meaning to obligations of the same kind or species as those comprehended by the preceding terms, "bonds" and "notes".

In its opinion (R. 9), the Board declined to apply the rule because in Section 217(a)(1) the words "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise" are followed by "not including (A) interest on deposits with persons carrying on the banking business, paid to persons not engaged in business within the United States and not having an office or place of business therein * * *". The most significant inference to be drawn from this phrase is that it is another example of the consistent purpose exhibited in the Act not to tax non-resident aliens or foreign corporations on interest except to the limited extent set out. The Board, however, drew the further (and, as we agree, the correct) inference that since the phrase in terms excludes bank interest only when paid to foreigners not engaged in business in the United States and having no office here, and does not exclude it when paid to foreigners engaged in business, or having an office here, Congress manifested an intention that bank interest was included in interest on "other interest-bearing obligations". From this, the Board concluded (and it is here we disagree) that "other interest-bearing obligations" should not be construed as *ejusdem generis* with bonds and notes.

The fallacy of that conclusion lies in the erroneous premise that the obligation of a bank to a depositor is not *ejusdem generis* with bonds and notes. What are obligations of the same kind or nature as bonds or notes? Clearly, the obligation to repay money loaned, even though not reduced to a written promise, is of the same character as if the note were given. Clearly, the obligation of an investment is *ejusdem generis* with a bond, whether or not evidenced by a certificate. Clearly, the non-contractual obligation of a judgment debtor or the obligation to refund taxes unlawfully exacted is not of the same nature as either a loan or an investment.

In the view of respondent, the interest here in question was not interest on a bond, note or other interest-bearing obligation within the purview of Section 217(a)(1) of the Revenue Act of 1926.

The respondent believes it to be equally plain that the interest, even though it were upon an obligation within the meaning of Section 217(a)(1) was not upon the obligation of a resident. This Court has often held that a statute should be read according to the natural and obvious import of the language, and it seems clear that the natural and obvious import of the word "resident" is one who has an abode or residence.

In *Consorzio Veneziano di Armamento e Navigazione* v. *Commissioner*, 21 B. T. A. 984, the Board of Tax Appeals stated at pages 988, 989:

> "The expression 'resident' in its ordinary acceptation does not refer to the Government itself and the language in the statute 'residents, corporate or otherwise', we think should be given its ordinary and generally accepted meaning. This view finds support in article 1509 of Regulations 69, with respect to this section of the statute, which states that a 'domestic corporation is a resident corporation * * *.' The regulations of the Commissioner construe the language in its ordinary and

> generally accepted meaning and make no reference to the Government as being 'resident, corporate or otherwise'."

Likewise in the case of the *State, A. R. Montgomery, Prosecutor* v. *Inhabitants of the City of Trenton*, 40 N. J. L. 89, 91, the Supreme Court of Judicature of the State of New Jersey held that indebtedness to the State could not be deducted from the taxable value of property under a statute permitting the deduction of indebtedness to residents; and said, in part:

> "It is only by the greatest latitude of construction that we can say that the state resides within the state. The word 'residing' refers to individual abode, though it is sometimes used figuratively. It will not apply to the state in its representative and governmental relation to its citizens. The people, as individuals, reside in the state, but the political body called the state cannot be said, in the proper use of language, to reside anywhere."

Even to extend the word "resident" beyond a natural person to a private corporation, Congress apparently thought it necessary so to state. Surely had it been intended to include the United States, words to that effect would have been included, and the Board of Tax Appeals so pointed out in *Consorzio Veneziano di Armamento e Navigazione* v. *Commissioner, supra.* As stated by the Board in that case, wherever in the Revenue Acts obligations of the United States are referred to, they are referred to by that name.

Moreover the construction asked by the petitioner involves two dilemmas.

Section 213(b)(4) of the Revenue Act of 1926 provides that the term "gross income" does not include, and that there shall be exempt from taxation, "interest upon * * * the obligations of the United States * * *."

The context in the quoted part of Section 213 is similar to the context in Section 217(a)(1). In each case, the word "obligations" is used in connection with other words referring to particular kinds of obligations in the nature of loans or investments. In a number of cases, it has been held that interest upon a refund of taxes, and interest upon other non-contractual obligations of the United States or a State or Municipality is not interest upon an obligation within the meaning of Section 213.

American Viscose Corporation v. *Commissioner*, 56 Fed. (2d.) 1033 (C. C. A. 3), Certiorari denied, 287 U. S. 615;
United States Trust Co. v. *Anderson*, 65 Fed. (2d.) 575 (C. C. A. 2);
Missouri Pacific R. R. Co. v. *Commissioner*, 22 B. T. A. 267;
Kline v. *Commissioner*, 26 B. T. A. 745;
Isham v. *Commissioner*, 26 B. T. A. 1040;
I. T. 1748 Cum. Bul. II-2, 92-93;
I. T. 2210 Cum. Bul. IV-2, 43.

The obvious dilemma that if this interest be construed to be upon an obligation of the United States so as to be taxable under Section 217, then it is exempt by Section 213, is avoided by the application of the construction contended for by the respondent.

Even if this interest be held to be upon an obligation within the purview of Section 217, but not upon an obligation within the purview of Section 213, still the same is relieved from tax by Section 236(a) of the Revenue Act of 1926, which allows as a credit, in computing net income, "the amount received as interest upon obligations of the United States which is included in gross income * * *." This dilemma also is avoided by the construction asked by respondent.

III.

The question presented in this case is of no prospective importance.

In the proposed Revenue Act of 1934 (H. R. 7835, 73rd Congress 2nd. Sess.), as passed by the House of Representatives, Section 119(a)(1), which is the corresponding provision to Section 217(a)(1) of the Revenue Act of 1926, has been amended to provide that "* * * Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise * * *", shall be treated as income from sources within the United States. The House of Representatives' Ways and Means Committee Report on the proposed Revenue Act of 1934 (Report No. 704, 73rd Congress, 2d. Sess., page 32) comments upon this change as follows:

> "Section 119. Income from sources within United States: Subsection (a)(1) of the present law has been construed by the courts to exempt nonresident aliens and foreign corporations from Federal income tax on any interest paid by the United States, the Territories, or the District of Columbia, on their obligations, tax refunds, or judgments. While it is not believed Congress intended to exempt such income from tax, the proposed change is made in order to remove any doubt as to the future."

The question presented by this case is of no prospective importance, for the reason that the Congress has the matter under consideration, and, it is to be presumed, will make such change as it may deem desirable for the future.

Conclusion.

The decision of the court below appears to be correct. The question upon which review is prayed is of no prospective general importance and in spite of the conflict of decisions referred to in the petition, it is submitted that the petition for certiorari should be denied.

Respectfully submitted,

TRUMAN HENSON,
Attorney for Respondent,
Office and P. O. Address,
26 Liberty Street,
New York, N. Y.

Dated: New York, N. Y., April 12, 1934.

Appendix.

Revenue Act of 1913, c. 16, 38 Stat. 166, Sec. II A, subdivision 1:

> "* * * a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere."

Revenue Act of 1916, c. 413, 39 Stat. 756, Sec. 10:

> "* * * a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *".

Revenue Act of 1918, c. 18, 40 Stat. 1077, Sec. 233(b):

> "In the case of a foreign corporation gross income includes only the gross income from sources within the United States, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States."

Senate Finance Committee Report, Revenue Act of 1921 (Report No. 275, 67th Congress, 1st Sess., p. 16):

> "Section 217 states explicit rules—applicable principally to nonresident aliens and foreign traders—for computing the net income derived from sources within the United States. The present law is both obscure and economically unsound, inasmuch as the Attorney General has held that where goods are manufactured or produced in the United States and sold abroad, no part of the profit is derived from a source within the United States. This section explicitly allocates certain important sources of income to the United States or to foreign countries, as the case may be, * * *."

House of Representatives Ways and Means Committee Report, Revenue Act of 1921 (Report No. 350, 67th Congress, 1st Sess., p. 12):

> "Section 223: The necessity for changing the law relating to the taxation of foreign traders has been explained in the discussion of section 201. It is further necessary to clarify and change the present law relating to 'income derived from sources within the United States', inasmuch as the Attorney General has held that where goods are manufactured or produced in the United States and sold abroad no part of the profit is derived from a source within the United States. Section 223 of the proposed bill explicitly allocates certain important sources of income within or without the United States, as the case may be * * *."

Revenue Act of 1921, c. 136, 42 Stat. 254:

Sec. 233(b):

"In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217."

Sec. 217, c. 136, 42 Stat. 243:

"(a) * * * the following items of gross income shall be treated as income from sources within the United States:

"(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *.

* * * * *

"(c) The following items of gross income shall be treated as income from sources without the United States:

"(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a); * * *."

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No. 10.

IN THE

Supreme Court of the United States

October Term, 1934.

GUY T. HELVERING, Commissioner of Internal Revenue,

Petitioner,

v.

STOCKHOLMS ENSKILDA BANK.

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT.

TRUMAN HENSON,
Attorney for Respondent,
26 Liberty Street,
New York, N. Y.

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IN THE

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OCTOBER TERM, 1934.

No. 10.

GUY T. HELVERING, Commissioner of Internal Revenue,
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v.
STOCKHOLMS ENSKILDA BANK.

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT.

Opinions Below.

The opinion of the Board of Tax Appeals (R. 8) is reported in 25 B. T. A. 1328. The opinion of the Court of Appeals of the District of Columbia (R. 19) is reported in 68 F. (2d) 407.

Jurisdiction.

The judgment below was entered December 4, 1933 (R. 22). On February 27, 1934, the Chief Justice entered an order granting an extension of time for the filing of a petition for a writ of certiorari for sixty days from March 4, 1934 (R. 23). The petition for a writ of certiorari was filed March 24, 1934, and was

granted April 30, 1934. The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether interest paid during 1927 by the United States to a foreign corporation upon a refund of income taxes, falls within the provisions of Section 217 (a)(1) of the Revenue Act of 1926 that "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise," is to be "treated as" income from sources within the United States, or the provisions of Section 217(c)(1) of that Act that other interest paid to a foreign corporation is to be "treated as" income from sources without the United States; and, if such interest falls within the provisions of Section 217(a)(1), then:

(a) Whether such interest is exempted from tax by Section 213(b)(4) of the Revenue Act of 1926; and if not,

(b) Whether such interest is allowable as a credit against income by virtue of Section 236(a) of the Revenue Act of 1926.

Statutes Involved.

The statute here involved is the Revenue Act of 1926 (c. 27, 44 Stat. 9) and the pertinent provisions thereof are hereinafter set out in the Appendix, *infra*, pp. 38-46. The more important of these may be paraphrased, in brief, as follows:

Section 230 of the Act imposes an income tax on the net income of corporations.

Section 232 defines net income to mean gross income, as defined in Section 233, less the deductions allowed.

Section 233 provides that "in the case of a foreign corporation, gross income means only gross income from sources within the United States determined * * * in the manner provided in Section 217."

Section 217(a)(1) provides that "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise," shall be "treated as" from sources within the United States, and Section 217(c)(1) provides that "Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)" shall be "treated as" from sources without the United States.

Section 213(b)(4) provides that interest upon obligations of the United States (with certain exceptions not here important) shall be excluded from gross income and exempt from the tax.

Section 236(a) provides that such interest upon obligations of the United States as is included in gross income, shall be allowed as a credit; that is to say, shall not be included in net taxable income.

Statement.

The facts are undisputed. As stated in the opinion of the Board of Tax Appeals, they are as follows (R. 8):

The respondent is a foreign corporation, organized and existing under the laws of the Kingdom of Sweden, with its principal office in that country. It had no office

or place of business in the United States. During the year 1927 the respondent received from the United States Government the sum of $8,683.91 as interest on a refund of Federal income taxes which had been overpaid for a prior year. The Commissioner of Internal Revenue increased the respondent's income for the year 1927 by including therein the interest on the refund, and on account of such increase determined a deficiency in the sum of $1,173.32. (See R. 4-5.) The respondent thereupon appealed to the Board of Tax Appeals (R. 2-3). That Board held that such interest is not within the definition of income to be "treated as" from sources within the United States and consequently not to be included in the gross income of a foreign corporation (R. 8-11). The Commissioner appealed to the Court of Appeals of the District of Columbia (R. 12-13), where the decision of the Board of Tax Appeals was affirmed.

Summary of Argument.

The brief for the petitioner sets up, and appears to rest its case upon, an asserted purpose on the part of Congress to tax to a foreign corporation every item of income derived in fact from sources within the United States. From this, the brief argues, Section 217(a)(1) should be so construed as to bring the interest here in question within the terms of the section, if that result can be accomplished without doing violence to the words employed.

In our view, on the contrary, the legislative history of the section unmistakably exhibits, and its words unambiguously express, exactly the opposite purpose. After years of experience of the uncertainties inherent in using the fact of the source of income as the criterion of its taxability or non-taxability, Congress abandoned

the source of the income as the test, and established in lieu thereof a system of definitions embracing every possible classification of income, and stating with precision and exactitude which classes of income were to be wholly taxed [Sec. 217(a)], which were to be wholly untaxed [Sec. 217(c)], and which were to be taxed in part and untaxed in part [Sec. 217(e)]. While, on the one hand, it was, of course, necessary, from jurisdictional considerations, to limit the classes of income to be taxed to those emanating in one manner or another from domestic sources, on the other hand, certain classes of income which clearly were from sources within the United States, as well as certain other classes of income which might have been contended to be from American sources, were expressly excluded from taxable classification. Indeed, in the case of interest, Section 217(c)(1) in terms provides for non-taxability, except such classes thereof as may fall within the definition contained in Section 217(a)(1).

With respect to the taxation of interest to foreign corporations, the purpose of Congress is clear that interest received by such taxpayers was to be taxed, or not taxed, depending only upon whether the same fell within the definition of Section 217(a)(1). The legislative purpose relied upon in the brief for the petitioner is, as we contend, non-existent; and there is no reason to construe the words of Section 217(a)(1) to embrace more than is connoted by their natural and accepted import.

Section 217(c)(1) provides that interest is not taxable to a foreign corporation unless it falls within the definition of Section 217(a)(1), which is: "Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise." Unless the interest here in

question can be brought within that definition, it must fall within Section 217(c)(1) and hence is expressly not taxable. As we contend, the interest received by the respondent upon the refund of its overpaid Federal taxes was not upon an "interest-bearing obligation" within the purview of Section 217(a)(1); and even if it were, the obligation was not that of a "resident". Giving to the words of Section 217(a)(1) their natural and obvious import, "interest-bearing obligation" is limited to a contractual engagement and does not include a statutory duty to compensate for a wrong; "resident", moreover, cannot be said to include the sovereign, which has no capacity to reside.

If this be doubtful, the applicable canons of construction lead to the same result. Section 217(a)(1) imposes a tax and should be strictly construed, as to both "obligations" and "residents", in favor of the taxpayer. Moreover, Section 217(c)(1) lays down a general rule of non-taxability, to which Section 217(a)(1) is an exception; and Section 217(a)(1) should, therefore, be construed strictly and all doubts resolved in favor of the general rule of non-taxability. Further, "obligations" occurs in a context calling for the application of the rule of *ejusdem generis* and should be limited in its meaning to duties contractual in nature, as are the preceding specific words. Finally, the word "obligations" has been judicially construed to exclude non-contractual duties in another section of the same statute where the context is precisely analogous.

If the last mentioned decisions are wrong, then this interest, if taxable under Section 217, is exempted by Section 213; and, in any event, if the interest is taxable under Section 217, it is allowable as a credit, and hence relieved from tax, by Section 236.

ARGUMENT.

I.

With the enactment of the Revenue Act of 1921, the Congress abandoned its unsatisfactory former policy of taxing nonresident aliens and foreign corporations upon all items of income derived in fact from sources within the United States; and substituted in lieu thereof the more certain and workable scheme, contained in the 1921 and all subsequent Revenue Acts, which "explicitly allocates certain important sources of income to the United States or to foreign countries, as the case may be." [1]

Under Revenue Acts preceding that of 1921, Congress had taxed nonresident aliens and foreign corporations on such of their income as was derived in fact from sources within the United States. The source of the income, as the test of taxability, however, was soon established to be unsatisfactory, for numerous perplexing questions as to the actual sources of many classifications of income began to appear. Difficulties arose as to the sources of the income of trans-oceanic steamship companies; of the income from the purchase of goods within and their sale without the United States, and the converse of that question; of the income from the manufacture, or partial manufacture of goods within and their sale without the United States, and the converse of that question; and of income of other kinds.

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1. The quotation is from the *Senate Finance Committee Report, Revenue Act of 1921*, Report No. 275, 67th Congress, p. 16.

In an Opinion of the Attorney General (32 Op. A. G. 336) rendered on November 3, 1920, it was held, among other things, that:

> (1) A foreign corporation partially manufacturing articles in this country, shipping them to England, finishing them and selling them there, derived no income from sources within the United States;
>
> (2) Income accruing to a foreign corporation from the purchase of logs in this country and their sale abroad did not constitute income from sources within the United States;
>
> (3) Income derived by a foreign corporation from the purchase of goods abroad and their sale in the United States through the medium of a New York corporation constituted income derived from sources within the United States; and
>
> (4) Income derived by a foreign steamship company from the transportation of freight and passengers from the United States to foreign ports constituted income derived from sources within the United States.

In view of this unsatisfactory state of affairs, Congress in considering the bill which became the Revenue Act of 1921 determined to change its test of taxability. The source of the income, as the criterion, had proven to be unworkable; and in the 1921 Act the more certain and practical test of a system of explicit definitions was established.

The purpose of Congress to make this fundamental change is stated in the *Senate Finance Committee Re-*

port, Revenue Act of 1921 (Report No. 275, 67th Congress, 1st Sess., p. 16):

> "Section 217 states explicit rules—applicable principally to non-resident aliens and foreign traders—for computing the net income derived from sources within the United States. The present law is both obscure and economically unsound, inasmuch as the Attorney General has held that where goods are manufactured or produced in the United States and sold abroad, no part of the profit is derived from a source within the United States. This section explicitly allocates certain important sources of income to the United States or to foreign countries, as the case may be, * * *."

And the purpose is also set out in the *House of Representatives Ways and Means Committee Report, Revenue Act of 1921* (Report No. 350, 67th Congress, 1st Sess., p. 12):

> "Section 223: The necessity for changing the law relating to the taxation of foreign traders has been explained in the discussion of Section 201. It is further necessary to clarify and change the present law relating to 'income derived from sources within the United States', inasmuch as the Attorney General has held that where goods are manufactured or produced in the United States and sold abroad no part of the profit is derived from a source within the United States. Section 223 of the proposed bill explicitly allocates certain important sources of income within or without the United States, as the case may be * * *."

So to clarify and change the law, Congress enacted the Revenue Act of 1921 with numerous new provisions and based (in this regard) upon a fundamentally different theory. For one subsection of seven lines,[2] contained in the Revenue Act of 1918, the provisions taxing foreign corporations were changed to and succeeded by a new section of fifteen subdivisions and ninety-three lines.[3] From a general rule that the source of the income was determinative, the test was changed to an all-inclusive system of detailed and specific definitions of taxable and non-taxable income. As regards interest, instead of the general rule that all interest which could be reached by the United States was taxable, the 1921 Act provided that no interest was taxable, except such as came within the defined exception to that rule. It is the provisions of the 1921 Act which have been carried over substantially unchanged into the Revenue Act of 1926.

The Revenue Act of 1918 provided that foreign corporations were taxable on "income from sources within the United States, * * *."[4]

Section 217 of the Revenue Act of 1921,[5] on the contrary, prescribed that the classes of income defined in subdivision (a) were to be "treated as" from sources within the United States and were wholly taxable; that the classes of income defined in subdivision (c) were to be "treated as" from sources without the United States and were wholly non-taxable; and, in subdivision (e),

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2. Section 233(b) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1077.

3. Section 217 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 243. Section 217 of the 1921 Act contains, in addition to the above, two other subsections carrying over provisions relating to deductions found in other parts of the 1918 Act.

4. Section 233(b), *supra*, foot-note 2.

5. *Supra*, foot-note 3.

that all income not covered by either (a) or (c) was to to "allocated or apportioned" and was taxable in part and non-taxable in part. But subdivision (a) does not include, in its definitions of income to be "treated as" from sources within the United States, every item of income in fact from sources within the United States, nor does subdivision (c) confine its definition of income to be "treated as" from sources without the United States to items of income in fact from sources without the United States.

The brief for the petitioner, as we understand, agrees with us that the plain purpose in making the change from the 1918 Act, was to substitute a comprehensive specification in order to avoid the disputes which had arisen under the prior law. Yet it is there contended that the change indicates a legislative purpose to extend and make all-inclusive taxes upon the income of foreign corporations derived from sources within the United States. In our view, no general purpose either to enlarge, or to diminish, the classes of income subject to the tax was indicated; the purpose which was exhibited was to change, in the interests of certainty, the criterion of taxability. While on the one hand the 1921 Act did not, of course, attempt to tax any income which was clearly without the jurisdiction of the United States, and therefore laid no tax on income which could not, under any construction, be said to be from domestic sources, on the other hand it expressly omitted to tax certain items of income clearly from sources in fact within the United States and other items of income which might well have been held to derive in fact from sources within the United States. For example, of the four classes of income as to which the Attorney General had ruled in his Opinion (32 Op. A. G. 336) above referred to, the 1921 Act taxed, in part, one of the classes

which the Attorney General had ruled was derived wholly from sources without the United States; and relieved from tax, in part, one of the classes which the Attorney General had ruled was derived wholly from sources within the United States.

But the brief for the petitioner contends that subsection (c) [which provides that all interest is non-taxable, except that defined in subsection (a)] is meaningless surplusage unworthy of consideration. In support of this contention, it is urged that subsection (a) is in itself all-inclusive, for the reason that (as regards interest) that subsection expressly excludes certain classes of interest which would otherwise be taxable. To this we reply that, wholly aside from the rule that the construction which gives meaning to all parts of the statute is always to be preferred, subsection (c) is an essential provision of the scheme of taxation laid down by Section 217. That subsection excludes from taxability all interest, whether from sources within the United States or not, except some, but not all, interest on the obligations of residents.

Under Section 217, the residence of the debtor is made the sole test of the taxability of interest on bonds, notes, or other interest-bearing obligations, but it cannot be said that the source from which interest is derived is conclusively determined by the place where the debtor resides. That is only one of the many criteria which would require consideration if the fact of the source were in issue. No one would suggest that interest paid by a non-resident debtor was subject to the tax, even though by any, or all, other criteria it was in fact from sources within the United States; yet such interest might well be taxable if the source were the criterion, or if subsection (c) were mere surplusage.

The fact is, that Section 217(a)(1) taxes interest which, by all criteria except the residence of the debtor, is derived from sources without the United States; and that Subsection (c) excludes from tax interest which, by all criteria except the residence of the debtor, is derived from sources within the United States. The test of taxability laid down is not the fact of the source—a particularly difficult question in the case of interest—but is the residence of the debtor, a fact which, in the usual case, is susceptible of ready and definite ascertainment. Interest on the obligations of a domestic corporation owning no property and doing no business in the United States, is derived from sources without the United States by every criterion except the residence of the debtor; yet it is taxable under Section 217.[6] Interest on money invested in a business carried on exclusively in the United States is, by every other criterion, derived from sources within the United States, even though the owner be a non-resident; yet from that fact alone, such interest is relieved from tax. The only criterion of taxability of interest is the definition contained in Section 217(a)(1); and Section 217(c)(1) expressly excludes all other interest from the tax. The exclusion of certain classes of interest by the provisions of subsection (a) relates only to interest which would otherwise be taxable because within the definition of taxable interest set out in that subdivision. Those exclusions are merely limitations on the definition contained in subsection (a), which expresses the single

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6. Such interest was held to be from sources without the United States and non-taxable under the Revenue Act of 1918, which taxed income "from sources within the United States, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise". Art. 92, Reg. 45; O. 908, Cum. Bul. No. 1, p. 100. But such interest was later held to be taxable because on the obligation of a resident. L. O. 1069, Cum. Bul. I-1, p. 204. But see Section 217 (a)(1)(B), *infra*, p. 39.

class of interest excepted from the general rule of non-taxability provided in subsection (c).

Subsection (c) is an important and essential part of Section 217, and no construction of that Section can, we submit, be correct unless it gives full effect to the provisions of subsection (c).

The contention in the brief for the petitioner is that, in spite of the expressed intent of Congress, in spite of the unambiguous form of Section 217, and in spite of the fact that that Section expressly excludes from taxability income which, had the criterion been the source, would have been taxed, nevertheless, the intention of Congress was to tax all income in fact from sources within the United States. We submit that to state the proposition is to answer it.

Both the Court below and the Board of Tax Appeals recognized that the criterion of taxability under the Revenue Act of 1926 was the definition contained in Section 217(a)(1).

The Court of Appeals of the District of Columbia, in its opinion herein, said (R. 20):

> "* * * The amount of interest * * * would be taxable * * * only in case the payment came within the classification of 'Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *.'"

And in its opinion in this case the Board of Tax Appeals stated (R. 9, 10):

> "It is at once apparent that all interest, even though concededly from sources within the United States, is not to be treated as interest from sources within the United States, for subdivision (c)(1) of

> Section 217 provides that interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a) shall be treated as income from sources without the United States. Therefore to constitute gross income from sources within the United States the interest herein must be brought within the provisions of said paragraph (1) of subdivision (a)."

Again, in an Opinion (34 Op. A. G. 93, 95) dated January 21, 1924, the Attorney General states:

> "The point is raised that the Revenue Act of 1921 reflects the legislative intent expressed in the Revenue Acts of 1916, 1917, and 1918. But the Act of 1921, in my opinion, was not a declaration of an intent already existing, but obscure, in the law; it was, rather, a change of the prior legislative rule."

And this published Opinion was followed by re-enactment of Section 217 of the Revenue Act of 1921, without substantial change, in the Revenue Acts of 1924[7] and 1926.

The reports of the *House Ways and Means Committee* and the *Senate Finance Committee (supra)* are, as we submit, incapable of any interpretation other than as here contended. The House Report states that the law must be changed, as well as clarified. Both Reports point out that the new law "allocates" classes of income. "Allocate" is not a word to be associated with the fact of the source of the income. Congress could not by statute change the source from which income in fact emanates; it could allocate to taxable and non-taxable

7. c. 234, 43 Stat. 253.

classes income which it had the power to tax. The fact that Section 217 provides that the income is to be treated as "from sources within" or "without the United States" carries forward the familiar language of the former Acts as a convenient label, but is of no further significance. The significant words are that the income is to be "*treated as*" from such sources.

The Revenue Act of 1921 was drawn by expert draftsmen with the accumulated experience of five immediately preceding income tax Acts, covering a period of thirteen years. It would have been simple, had it been so intended, to phrase the Act to make the source of the income the criterion, and to make such precautionary provisions with respect to any particular classes of income as might have been thought wise. The words of Section 217, however, are plain and unambiguous. A system of definitions is laid down and those definitions are expressly made the criteria of taxability. A suggestion that language so inapt, with respect to the purpose contended for by petitioner, would have been used, had that purpose in fact existed, will not be readily received.

The intent of Congress, plainly expressed in the Reports of its Committees, was clearly and appropriately accomplished in Section 217. A consideration of the legislative history, the form and the words, and the unquestioned effect, of Section 217, compels, we submit, a conclusion that in enacting the Revenue Act of 1921, Congress abandoned its former policy of taxing foreign corporations on all income from sources within the United States. The provisions of Section 217 of the Revenue Act of 1921 were carried forward substantially unchanged into Section 217 of the Revenue Acts of 1924 and 1926; and the clear, the evident, and the expressed purpose of Congress in respect of Section 217 of the

Revenue Act of 1926 was to refrain from taxing foreign corporations upon any interest except upon such items thereof as might fairly be covered by the definition contained in Section 217(a)(1). No purpose of Congress, or other reason, suggests which would call for any construction of Section 217(a)(1) any more inclusive than that implied by the plain and obvious import of the words.

II.

The interest received by the respondent upon the refund of its federal income taxes theretofore overpaid was not upon a bond, note, or other interest-bearing obligation of a resident, corporate or otherwise, within the purview of Section 217(a)(1) of the Revenue Act of 1926.

Section 3220 of the Revised Statutes, as amended by Section 1111 of the Revenue Act of 1926 (*infra*, p. 45), authorizes the Commissioner of Internal Revenue to "remit, refund, and pay back all taxes erroneously or illegally assessed or collected." Section 284(a) of the Revenue Act of 1926 (*infra*, p. 44) provides that where there has been an overpayment of any income tax imposed under a prior revenue law "the amount of such overpayment shall * * * be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer." Section 1116(a) of the Revenue Act of 1926 (*infra*, p. 46) provides for the payment of interest at 6 percent. upon the allowance of a credit or refund of any tax erroneously collected.

Pursuant to these statutes, and during the year 1927, the United States paid the sum of $8,683.91 to the re-

spondent as interest on the refund of an overpayment of income tax theretofore made by the respondent. The question presented is whether this interest should be treated as a part of the respondent's gross income for the purpose of computing its income tax for 1927.

Section 233(b) of the Revenue Act of 1926 (*infra*, p. 44), provides:

> "In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217."

Section 217 (a)(1) (*infra*, p. 39), provides:

> "* * * the following items of gross income shall be treated as income from sources within the United States:
>
> "(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *."

Section 217(c)(1) provides:

> "The following items of gross income shall be treated as income from sources without the United States:
>
> "(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)."

Without considering, for the moment, the fact that the Revenue Act of 1926, in another section, expressly

exempts interest on obligations of the United States, and, in still another section, allows as a credit any interest upon obligations of the United States which may be included in gross income, the inquiry resolves itself into whether the interest received by the respondent, as aforesaid, was "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise". Section 217(c)(1) expressly excludes from taxable classification any other interest received by a foreign corporation.

To be within the definition of Section 217(a)(1), and subject to tax, the interest must be on a bond, note, or other interest-bearing obligation; and further, such bond, note, or other interest-bearing obligation must be that of a resident, corporate or otherwise. Unless both of such requirements are fulfilled, the interest is not taxable. It is the contention of the respondent that the interest here in question fulfills neither.

(A) The interest is not upon an "interest-bearing obligation".

The interest received by the respondent is not, of course, upon a bond or note. We contend it to be equally clear that it is not on any "other interest-bearing obligation" within the meaning of Section 217(a)(1). The question is whether the words "interest-bearing obligations", as used in this context have a meaning so broad as to include every conceivable sort of duty.

It is a fundamental rule of statutory construction that the words used in a statute are to be taken in their natural and accepted meanings.

Old Colony Railroad Co. v. *Commissioner*, 284 U. S. 552, 560;

United States v. *Temple,* 105 U. S. 97, 99;
United States v. *Isham,* 84 U. S. (17 Wall.) 496, 504.

Here, as pointed out above, in our first point, no purpose of Congress, or other reason, appears for straining the words of Section 217(a)(1) to embrace more than is connoted by their usual and ordinary signification. In its natural, accepted meaning, the word "obligations" does not embrace the duty to compensate for a wrong, but connotes only duties of a contractual nature.

The brief for the petitioner quotes Webster's New International Dictionary, as including as a meaning of the word "obligation", "any duty imposed by law", but it is submitted that this is not the literal or ordinary, but the broadest meaning of the term. The quotation is from the third meaning given for the word which is, in full, as follows:

> "3. That which a person is bound to do or forbear; any duty imposed by law, promise or contract, by the relations of society, or by courtesy, kindness, etc.
>
> " 'Every man has *obligations* which belong to his station. Duties extend beyond *obligation,* and direct the affections, desires, and intentions, as well as the actions.—
>
> Whewell.' "

The meaning of the word in law is given by the same dictionary in these words:

> "2. *Law.* A bond with a condition annexed, and a penalty for nonfulfillment. In a larger sense, it

is a formal and binding agreement or acknowledgment of a liability to pay a certain sum or do a certain thing."

And this is the well defined meaning of the word.

Co. Litt. 172-a;
Munzinger v. *United Press, et al.*, 52 App. Div. 338, 341;
Karasik, et al. v. *Peoples Trust Co.*, 252 Fed. 324, 335;
Tierney v. *Dowd & Co.*, 238 N. Y. 282, 288.

The meaning of "obligations" is not inelastic, however, and it may be extended when indicated by the context. Indeed, under some circumstances "obligations" may even include non-contractual duties, but that is an extreme construction to be used only when necessitated by the umistakable requirements of the context, or by way of extending the signification of the word beyond its ordinary, to its broadest, meaning in order to effectuate a clear purpose not clearly expressed.

The context in Section 217(a)(1) does, as we agree, indicate a meaning for "obligations" broader than that implied in its original legal meaning of a bond, but nothing in the context suggests, and no legislative purpose commends, that the significance of the word be construed in that extreme sense contended for in the brief for the petitioner. As urged in Point I above, the broad purpose assigned to Congress by the brief for the petitioner as a reason for such an unusual construction, does not exist.

As used in this context the words "interest-bearing obligations" should, in accordance with the rule of *ejusdem generis*, be so construed as to limit the meaning

of "obligations" to those of a kind or nature generically similar to bonds and notes. This might confine "obligations" to written instruments, or to any duties to repay borrowed money. Giving the broader of these meanings to the word, so as to include in its significance any duty to repay money loaned, we achieve an harmonious meaning for the whole subsection, at once generically similar to bonds and notes and inclusive of the meaning of the next succeeding words.

On the one hand, the words "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise" in Section 217(a)(1) are followed by "not including (A) interest on deposits with persons carrying on the banking business paid to persons not gaged in business within the United States and not having an office or place of business therein". Since the phrase in terms excludes bank interest only when paid to foreigners not engaged in business in the United States and not having any office here, and does not exclude it when paid to foreigners engaged in business or having an office here, it is manifest that Congress intended bank interest to be included in "Interest on * * * other interest-bearing obligations." On the other hand, the preceding words, "bonds" and "notes", deserve consideration, for they are not mere surplusage. If, as contended in the brief for the petitioner, "obligations" includes any sort of duty whatever, those words become meaningless. Had Congress intended "obligations" to have a meaning so broad, the words would have been simply "all interest paid by resident debtors", or some other appropriate language, and not the language actually used, which is unsuited to such a construction.

If "obligations" is construed to mean all duties arising out of an express or implied promise to repay

money loaned, a result is achieved which gives to the word neither its most technical, nor its broadest possible, significance, and which, at the same time, is *ejusdem generis* with bonds and notes and inclusive of the duty to repay a bank deposit.

This is the meaning of "obligations" which, as we contend, is that implied by the natural, ordinary and accepted import of the words; and the only meaning which gives to every part of the subsection its proper weight and significance.

Not only does a consideration of Section 217(a)(1) itself indicate the construction for which we contend, but an examination of the remainder of the statute thoroughly confirms that view.

The construction here contended for is that applied in *American Viscose Corporation* v. *Commissioner*, 56 Fed. (2d.) 1033 (C. C. A. 3), certiorari denied, 287 U. S. 615, cited in the petitioner's brief. In that case the court had under consideration whether interest on a refund of Federal income taxes is interest on an obligation of the United States within the meaning of the word "obligations" in Section 213(b)(4),[8] where that term follows a list of words naming specific kinds of interest-bearing obligations. Section 213(b)(4) expressly exempts and excludes from gross income "Interest upon * * * securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obligations of the United States * * *"; and the Court held that the word "obligations" does not include the duty to refund overpaid taxes.

In five other cases the issue was the same; *i. e.*, whether interest paid on a statutory duty to compensate is

8. *Infra*, p. 38.

interest on an "obligation" within the meaning of Section 213(b)(4); and in each of these cases the same distinction was drawn. Interest upon a statutory obligation of the United States (or a State or Municipality) is not interest upon an "obligation" within the meaning of the Revenue Acts when that word is associated with words referring specifically to various kinds of promissory obligations.

United States Trust Co. of New York v. *Anderson*, 65 Fed. (2d.) 575 (C. C. A. 2), certiorari denied, 290 U. S. 685;
Missouri Pacific R. R. Co. v. *Commissioner*, 22 B. T. A. 267;
Kline v. *Commissioner*, 26 B. T. A. 745;
Isham v. *Commissioner*, 26 B. T. A. 1040;
Kansas City Southern Ry. Co. v. *Commissioner*, 16 B. T. A. 665.

Wholly aside from the fact that in a highly technical statute such as one of our Revenue Acts, which are drawn by expert draftsmen and phrased with nice precision, it will not readily be infered that important words do not have the same meaning throughout the Act; the analogy between Sections 217(a)(1) and 213(b)(4) is too close to be disregarded.

In each case the word "obligations" follows words indicating particular kinds of written obligations within the technical meaning of the term, and in each case it is necessary to give to "obligations" that broader meaning, here contended for, which results in including within its significance all duties arising from the borrowing of money. In the case of Section 217(a)(1) the latter necessity arises, as aforesaid, from the phrase excluding bank interest from taxability only under certain circumstances. In the case of Section 213(b)(4) the necessity does not appear on the face of the statute,

but by printed administrative regulation incorporated into the statute by re-enactment without change. In each Section the unwritten obligation to be included in the meaning of the word is the obligation of a bank to repay a deposit; in Section 217(a)(1) it is the obligation arising out of "deposits with persons carrying on the banking business"; in Section 213(b)(4) the obligation arising out of "moneys deposited in postal savings banks".[9]

Article 77 of Regulations No. 62, promulgated in 1922 and relating to the Revenue Act of 1921, provides (as do the Regulations under all subsequent Acts) that interest on postal savings accounts is exempt from tax, as interest on an obligation of the United States; and Section 213(b)(4) of the Revenue Act of 1921 has been re-enacted without change in this regard in each succeeding Revenue Act. *Article 77* is, in part, in these words:

> "Art. 77. INTEREST UPON UNITED STATES OBLIGATIONS. * * * Interest credited to postal savings accounts upon moneys deposited in postal savings banks is exempt from income tax. * * *" (Art. 77, Reg. 62.)

The analogy between Section 217(a)(1) and Section 213(b)(4) is obvious and actual. As six cases have held, "obligations" in Section 213(b)(4) does not include a statutory duty to compensate for a wrong. The same meaning must be given to the word in Section 217(a)(1). There is no reason to give the word one meaning in one section and another in the other; and if "obligations" has the same meaning in both sections, the interest here in question must either be omitted from the tax laid by

9. The quotation is from Article 77, Regulations No. 62.

Section 217(a)(1) or exempted under Section 213(b)(4). As aforesaid, to contend that the interest here under consideration is taxable, the petitioner must assert, as his fundamental proposition, that it is interest on an obligation of the United States; but if the interest is on an obligation of the United States, then it is exempted from taxation by Section 213(b)(4). The reply to this apparent dilemma is to construe "obligations" as contended above, that interest on non-contractual duties is not on "obligations" of the United States.

But if the interest received by the respondent is within the definition of Section 217(a)(1), a further dilemma presents. Section 236(a) of the Act provides:

> "For the purpose only of the tax imposed by section 230 there shall be allowed the following credits:
>
> "(a) The amount received as interest upon obligations of the United States which is included in gross income under section 233; * * *."

The tax under consideration is that imposed upon respondent by Section 230.[10] The only gross income of respondent is that defined under Section 233, and is that "from sources within the United States, determined * * * in the manner provided in Section 217". No contention that the meaning of "obligations of the United States" in Section 236(a) must be limited by context to obligations of one sort or another can be asserted, for there is no context to which to refer. The term is simple, plain, general and all inclusive. The interest here in question is not taxable (because it is not included in gross income), unless it is on an "obli-

10. *Infra*, p. 43.

gation" of the United States; but if it is upon an "obligation" of the United States, and is included in gross income, then it is allowed as a credit by Section 236(a), is therefore not net income, and consequently not liable to the tax. Again, the obvious answer is that this interest is not upon an "obligation" within the meaning of Section 217(a)(1).

In the foregoing, we have contended that without the aid of any rule of strict construction, the interest here in question should be construed to be without the scope of Section 217(a)(1). Under the applicable rules, however, Section 217(a)(1) should be construed strictly in favor of the respondent and against the Government.

Section 217(a)(1) imposes a tax. The well established rule is that a statute imposing a tax is to be strictly construed in favor of the taxpayer.

Burnet v. *Niagara Falls Brewing Co.*, 282 U. S. 648, 654;

Reinecke v. *Northern Trust Co.*, 278 U. S. 339, 348;

United States v. *Merriam*, 263 U. S. 179.

In the last named case, this Court said, pp. 187, 188:

> "* * * On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer. * * *"

Of the possible meanings of the word "obligations", only the broadest is sufficient to include this interest within its scope. Where the word is subject to a rule of strict construction, it would seem to be conclusive that its significance does not include any non-contractual duty.

The rule of strict construction is the final term of the analogy between Sections 217(a)(1) and 213(b)(4). As above set out, the analogy between the respective contexts of the two sections is complete. But in assigning the meaning here contended for to the word "obligations", in the six cases above cited (*supra*, pp. 23, 24), the respective Courts applied the rule of strict construction to the word. The rule of strict construction, however, is equally applicable to Section 217(a)(1) and the analogy is thus perfected. In Section 213(b)(4) an exemption is granted to interest on "obligations". That word must, therefore, be strictly construed and its broadest possible meaning must not be implied unless plainly required. In Section 217(a)(1) a tax is laid upon interest on "obligations". Again, the word must be strictly construed and its broadest possible meaning must not be implied unless plainly required. In neither section does the context, the purpose of Congress, nor any other reason, require or suggest the broadest possible meaning. In neither section, therefore, does the word include statutory duties.

But it is contended in the brief for the petitioner that taxation is the rule, and exemption the exception, and that any doubt as to the taxability of the interest here in question must, therefore, be resolved in favor of taxation. To this we reply that however true the petitioner's major premise may be as regards domestic corporations, it is, as hereinabove in Point I set out, exactly contrary to the fact in the case of foreign cor-

porations. Section 217(c)(1) lays down the general rule that interest received by a foreign corporation is not subject to tax. The provisions of Section 217(a)(1) state an exception to that general rule. With respect to interest received by foreign corporations, both the form and the substance of Section 217 establish non-taxability as the rule and taxability as the exception.

Section 217(c)(1) provides non-taxability for all interest except that defined in Section 217(a)(1). It is Section 217(c)(1) which is general in form; Section 217(a)(1) is explicit.

Section 217(c)(1) covers the broad and inclusive field; Section 217(a)(1), the narrow and restricted. Within the purview of Section 217(c)(1) is included all interest, whether derived from sources within or without the United States, except some, but not all, interest on the obligations of residents.

Where a statute establishes a general rule, with exceptions, the exceptions should be strictly construed, they include only what their plain language embraces; they must not be extended by implication; the expression of one exception excludes all others; and all doubts must be resolved in favor of the general rule.

United States v. *Woodward,* 256 U. S. 632, 634;
Spokane & Inland Empire R. Co. v. *United States,* 241 U. S. 344, 350;
Equitable Life Assurance Society v. *Clements,* 140 U. S. 226, 234;
Bend v. *Hoyt,* 13 Pet. 263, 271, 272;
Piedmont & N. Ry. Co. v. *United States,* 30 Fed. (2d.) 421;
Hopkins, et al. v. *United States,* 235 Fed. 95 (C. C. A. 8);

Baker v. *Clowser, et al.*, 158 Iowa 156; 43 L. R. A. (N. S.) 1056.

The respondent is not, as intimated in the brief for the petitioner, seeking an exemption here. The distinction between exempting an item and refraining from taxing it is legitimate and clear. The rule of strict construction of an exemption (which is one expression of the more general rule that an exception is to be strictly construed) is not applicable in this case. Far from the construction of Section 217(c)(1) being limited by a rule of strict construction on the ground that an exemption is claimed, it is the construction of Section 217(a)(1) which should be confined, because that subsection expresses an exception.

It is the contention of the respondent that, without the aid of the rules of strict construction, it is clear that the interest here under consideration was not upon an "obligation" within the meaning of Section 217 (a)(1); but if there be any doubt in this regard, then, pursuant to the strict construction made applicable by the form and substance of Section 217, that doubt should be resolved in favor of non-taxability.

It is contended that this interest is not taxable to the respondent because it is not interest on "bonds, notes, or other interest-bearing obligations" within the meaning of Section 217(a)(1) of the Revenue Act of 1926.

(B) The interest here in question, even if upon an "obligation" within the meaning of Section 217(a)(1), is, nevertheless, not upon the obligation of a resident, corporate or otherwise, within the meaning of that subsection.

In any event, and even if the interest received were interest upon an interest-bearing obligation within the

meaning of the statute, nevertheless, the obligation is not that of a resident, corporate or otherwise. The term "resident" means one who dwells in a place, or has a place of abode and cannot be applied to a sovereign or government, which has no capacity to reside or have an abode.

Except for the general and unsupported assertions that, as a corporate entity, the United States obviously must have a corporate residence somewhere, and that a sovereign resides where it is sovereign, the brief for the petitioner, it is submitted, begs this question. The inquiry is not where, but whether, the United States resides.

This is the point upon which the Board of Tax Appeals based its decision for the respondent. While we contend that that decision should have been grounded not only upon the incapacity of the United States to reside, but also on the other points raised herein (which were most seriously urged before the Board and the Court below), we call attention to the fact that a decision favorable to the respondent on either the foregoing, or the following contentions, should result in affirmance.

As we have above pointed out, there is no legislative intent, or any other reason, calling for any construction of Section 217(a)(1) more favorable to the petitioner's contentions than that implied by the natural and obvious import of the words. On the contrary, for two reasons, the rule of strict construction should be applied and all doubts resolved in favor of non-taxability. And this applies, of course, to the construction of "residents" with a force equal to that with which it applies to "obligations."

It is our contention that the plain, ordinary and accepted significance of the language requires the con-

struction that the United States is not a resident. To repeat from our brief in opposition to certiorari, it seems clear, and it has been held, that the natural and obvious import of the word "resident" does not include the sovereign.

In the case of the *State* v. *City of Trenton*, 40 N. J. L. 89, 91, the Supreme Court of Judicature of the State of New Jersey held that indebtedness to the State could not be deducted from the taxable value of property under a statute permitting the deduction of indebtedness to residents; and said, in part:

> "It is only by the greatest latitude of construction that we can say that the state resides within the state. The word 'residing' refers to individual abode, though it is sometimes used figuratively. It will not apply to the state in its representative and governmental relation to its citizens. The people, as individuals, reside in the state, but the political body called the state cannot be said, in the proper use of language, to reside anywhere."

And in *Consorzio Veneziano di Armamento e Navigazione* v. *Commissioner*, 21 B. T. A. 984, where it was held that interest paid by the United States on an award of compensation for property taken during the war is not income from sources within the United States, within the meaning of Section 119(a)(1) of the Revenue Act of 1928 [which is substantially the same as Section 217(a)(1) of the 1926 Act], and thus not taxable when paid to a foreign corporation, the Board of Tax Appeals said, at page 988:

> "As we view the question, it is not necessary for us to determine whether the amount was awarded

as interest or as compensation. Conceding for the sake of argument that it was interest as contended by the respondent, not all interest is 'income from sources within the United States' taxable as income of a foreign corporation. The Revenue Act of 1928, Section 119(a)(1), provides what shall be included in gross income of a foreign corporation with respect to interest as follows:

> "'Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise * * *'

and in paragraph (c) of the same section provides:

> "'The following items of gross income shall be treated as income from sources without the United States: (1) Interest other than that derived from sources within the United States as provided in subsection (a)(1) of this section.'

"In our opinion, even if the amount constituted interest, it was not interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise. It would be a strained construction to say in the first place that the United States was a resident, corporate or otherwise, of the United States. Wherever in the statute obligations of the United States are referred to they are referred to specifically as 'obligations of the United States'. The expression 'resident' in its ordinary acceptation does not refer to the Government itself and the language in the statute 'resident, corporate or otherwise', we think should be given its ordinary and generally accepted meaning. This view fiinds sup-

port in article 1509 of Regulations 69, with respect to this section of the statute, which states that a 'domestic corporation is a resident corporation * * *.' The regulations of the Commissioner construe the language in its ordinary and generally accepted meaning and make no reference to the Government as being 'resident, corporate or otherwise'."

As stated by the Board, wherever the Revenue Acts refer to obligations of the United States, they are specifically so designated. Similarly, wherever the Revenue Acts refer to the United States, they are referred to in unequivocal terms.

Section 213(b)(4) exempts interest on "(A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or * * * (C) the obligations of the United States * * *."

Section 236 grants a credit with respect to "interest upon obligations of the United States".

Section 214(a)(10) allows the deduction of contributions to "(A) The United States, any State, Territory, or any political subdivision thereof, or the District of Columbia * * *; (B) any corporation * * *."

The distinction between a private corporation and a sovereign entity indicated in Section 214(a)(10) is also made in Section 256, which refers to "interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations".

Of course, the United States is a body politic and corporate. Yet Congress has indicated by the quoted Sections that the United States is not included within

the term "corporation" as used in the Revenue Act of 1926. Indeed, Section 230 lays a tax "upon the net income of every corporation". Of course, no tax was intended to be laid upon the United States; yet here again the construction for which the petitioner contends would require the holding that, even in an Act so meticulously drawn as the Revenue Acts, the same word is to be given different meanings in different sections, a conclusion always to be avoided.

In the brief for the petitioner, it is contended that the result in *State* v. *City of Trenton, supra,* was reached in the exercise of a strict construction dictated by a legislative purpose to be served by limiting the meaning of the word "residing." But the rule of strict construction is applicable here, as well, and not only "obligations," but also "residents" should be construed strictly in favor of non-taxability.

It is contended that in any event the interest received by the respondent is not upon the obligation of "residents, corporate or otherwise," within the meaning of Section 217(a)(1) of the Revenue Act of 1926.

There remains the point raised in the brief for the petitioner that, inasmuch as domestic corporations have been held to be taxable on interest on refunds of overpaid taxes, it is unfair that foreign corporations are not likewise taxed.

But as stated by this Court in *Brushaber* v. *Union Pacific R. Co.,* 240 U. S. 1 (in disposing of objections to the progressive rates of the income tax), p. 25:

> "* * * it is, of course, superfluous to say that arguments as to the expediency of levying such taxes, or of the economic mistake or wrong involved in their imposition, are beyond judicial cognizance."

Again, in *La Belle Iron Works* v. *United States,* 256 U. S. 377, this Court said, pp. 392, 393:

> "The difficulty of adjusting any system of taxation so as to render it precisely equal in its bearing is proverbial, and such nicety is not even required of the States under the equal protection clause, much less of Congress under the more general requirement of due process of law in taxation."

There is no reason, either of law, or policy, why the United States should not tax domestic corporations on classes of income tax-free to foreign corporations.

> *Barclay & Co.* v. *Edwards,* 267 U. S. 442, 449, 450.

Congress may have had numerous reasons, of varying degrees of persuasiveness, for making the differentiation, as, for example, that interest of this class was not earned in competition with domestic corporations, but this is pure speculation and of no importance, for we are concerned only with whether, not why, this interest is excluded from tax. We have demonstrated above, as we contend, that Congress not only did make the taxability of interest, when received by foreign corporations, depend solely upon the explicit definition of Section 217(a)(1), but that it intended to do so and was impelled by the desire of establishing a certain and workable criterion.

Congress intended to establish, and did establish, the precise definition contained in Section 217(a)(1) as the criterion of taxability of interest to a foreign corporation. The words of that definition are not sufficiently broad, when taken in their natural and accepted sense,

to include a duty to refund overpaid taxes as an "obligation," or the United States as a "resident," and if this be doubtful the applicable rules of strict construction require the doubt to be resolved in favor of non-taxability. The interest received by the respondent in connection with the refund of its overpaid income taxes is not within the ambit of the definition contained in Section 217(a)(1) and is not subject to the tax.

Conclusion.

For the reasons stated, we respectfully submit that the judgment below should be affirmed.

Dated: New York, N. Y.,
October 3, 1934.

Respectfully submitted,

TRUMAN HENSON,
Attorney for Respondent,
26 Liberty Street,
New York, N. Y.

APPENDIX.

Statutes Involved.

Revenue Act of 1926, c. 27, 44 Stat. 9:

Sec. 2. (a) When used in this Act—

* * * * *

(3) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(4) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(U. S. C. App., Title 26, Sec. 1262.)

Sec. 213. For the purposes of this title, except as otherwise provided in section 233—

(a) The term "gross income" includes * * *.

(b) The term "gross income" does not include the following items, which shall be exempt from taxation under this title:

* * * * *

(4) Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obliga-

tions of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal-savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from income taxes;

* * * * *

(U. S. C. App., Title 26, Sec. 954.)

Sec. 217. (a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:

(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as de-

termined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable;

(2) The amount received as dividends (A) from a domestic corporation other than a corporation entitled to the benefits of section 262, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or (B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section;

(3) Compensation for labor or personal services performed in the United States;

(4) Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property; and

(5) Gains, profits, and income from the sale of real property located in the United States.

* * * * *

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a);

(2) Dividends other than those derived from sources within the United States as provided in paragraph (2) of subdivision (a);

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

* * * * *

(e) Items of gross income, expenses, losses and deductions, other than those specified in subdivisions (a) and (c), shall be allocated or apportioned to sources

within or without the United States under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses or other deductions which can not definitely be allocated to some items or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits and income from (1) transportation or other services rendered partly within and partly without the United States, or (2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of per-

sonal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits and income derived from the purchase of personal property within the United States and its sale within a possession of the United States or from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States. (U. S. C. App., Title 26, Sec. 958.)

Sec. 230. (a) In lieu of the tax imposed by section 230 of the Revenue Act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation, a tax at the following rates:

(1) For the calendar year 1925, 13 per centum of the amount of the net income in excess of the credits provided in sections 236 and 263; and

(2) For each calendar year thereafter, 13½ per centum of such excess amount.

(b) A taxpayer whose taxable year is the calendar year and who elects for the calendar year 1925 to pay the tax imposed by this section in four installments as provided in section 270, shall pay such installments in amounts as follows:

(1) The amount of the first and second installments shall each equal 24 per centum of the tax; and

(2) The amount of the third and fourth installments shall each equal 26 per centum of the tax. (U. S. C. App., Title 26, Sec. 981.)

Sec. 232. In the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income as defined in section 233 less the deductions allowed by sections 234 and 206, and the net income shall be computed on the same basis as is provided in subdivisions (b) and (d) of section 212 or in section 226. In the case of a foreign corporation or of a corporation entitled to the benefits of section 262 the computation shall also be made in the manner provided in section 217. (U. S. C. App., Title 26, Sec. 984.)

Sec. 233. (a) In the case of a corporation subject to the tax imposed by section 230 the term "gross income" means the gross income as defined in sections 213 and 217, except that mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined (except in the case of insurance companies subject to the tax imposed by sections 243 or 246) in the manner provided in section 217. (U. S. C. App., Title 26, Sec. 985.)

Sec. 236. For the purpose only of the tax imposed by section 230 there shall be allowed the following credits:

(a) The amount received as interest upon obligations of the United States which is included in gross income under section 233; * * *.

(U. S. C. App., Title 26, Sec. 988.)

Sec. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed

by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

(U. S. C. App., Title 26, Sec. 1065.)

* * * * *

Sec. 1111. Section 3220 of the Revised Statutes, as amended, is amended to read as follows:

"Sec. 3220. Except as otherwise provided in sections 284 and 319 of the Revenue Act of 1926 the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; * * *."

(U. S. C. App., Title 26, Sec. 149.)

Sec. 1116. (a) Upon the allowance of a
fund of any internal-revenue tax errone
legally assessed or collected, or of any pen
without authority, or of any sum which w
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be allowed and paid on the amount of su
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(U. S. C. App., Title 26, Sec. 153.)

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SUPREME COURT OF THE UNITED STATES.

No. 10.—October Term, 1934.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, *vs.* Stockholms Enskilda Bank.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[November 5, 1934.]

Mr. Justice Sutherland delivered the opinion of the Court.

Respondent, a foreign corporation having no office or place of business within the United States, received, during the year 1927, a refund of income taxes theretofore paid, including interest thereon in the sum of $8,683.91. In 1931, the Commissioner of Internal Revenue assessed against respondent in respect of this interest a deficiency of $1,172.32 upon its tax liability for the year 1927. The Board of Tax Appeals, upon petition for a redetermination, held that there was no deficiency and that the commissioner was in error in so deciding. 25 B. T. A. 1328. Upon petition for review brought by the commissioner, the court below sustained the action of the board. 68 F. (2d) 407.

The case involves a consideration of certain provisions of the Revenue Act of 1926, c. 27, 44 Stat. 9. Sec. 233 (b) of that act provides that, in the case of a foreign corporation, "gross income" means only gross income from sources within the United States, determined in the manner provided in § 217, the pertinent provisions of which follow:

"Sec. 217. (a) In the case of a nonresident alien individual . . . , the following items of gross income shall be treated as income from sources within the United States:

"(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, . . .

"(c) The following items of gross income shall be treated as income from sources without the United States:

"(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a); . . . "

The question for determination is whether the interest paid upon the amount of the tax refund falls within the classification, 'interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.'' The contention of respondent before the Board of Tax Appeals and in the court below was, as it is here, that such interest payment was not within the reach of the provisions of § 217 (a), because (1) it was not interest upon an interest-bearing obligation, and (2) the United States is not a ''resident'' within the meaning of the phrase ''residents, corporate or otherwise''.

First. If the words ''interest-bearing obligations'' stood alone, there would be no room for doubt as to their inclusive effect. Section 1111, 44 Stat. 115, Title 26, U. S. C. App. § 149, authorizes the commissioner to refund and pay back all taxes illegally or erroneously collected. The decision of the commissioner that a tax has been illegally or erroneously collected necessarily creates an obligation to make repayment. Section 1116 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 119, Title 26 U. S. C. App. § 153, provides that interest at the rate of six per centum per annum from the date of the payment of the tax to the date of the allowance of the refund shall be allowed and paid. Obviously, an obligation upon which by express statutory direction interest must be paid is an interest-bearing obligation.

The point is made, however, that the word ''obligations'', as it occurs in another part of the act, has been given a narrower construction, and that this is persuasive of the restricted meaning contended for here. That much may be conceded, since ''there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.'' *Atlantic Cleaners & Dyers* v. *United States,* 286 U. S. 427, 433. But since most words admit of different shades of meaning, susceptible of being expanded or abridged to conform to the sense in which they are used, the presumption readily yields to the controlling force of the circumstance that the words, though in the same act, are found in such dissimilar connections as to warrant the conclusion that they were employed in the different parts of the act with different intent. *Idem.* The comparison sought to be made is between the words in § 213 (b) (4) of the act, and the same words in § 217 (a). The former provides that the term ''gross income'', among other things, does not include interest upon ''obli-

gations of the United States." It is clear from a consideration of the entire section and of the subject matter that the purpose of Congress, in thus excluding from gross income interest upon such obligations, was to aid the borrowing power of the federal government by making its interest-bearing bonds more attractive to investors. *American Viscose Corp.* v. *Com'r of Int. Rev.*, 56 F. (2d) 1033. Compare *United States Trust Co. of New York* v. *Anderson*, 65 F. (2d) 575, 577-578. The scope of the word "obligations" as there employed must be narrowed accordingly, and not extended to include interest upon indebtedness not incurred under the borrowing power, as the court in the *Viscose* case properly held. But the use of the words "interest on . . . interest-bearing obligations" in § 217 (a) is for a different purpose, namely, to produce revenue, not to encourage loans in aid of the borrowing power. The intent of Congress, therefore, in the one case, is fulfilled by giving the phrase a construction within the narrow purposes of § 213 (b) (4); and, in the other case, by a construction, if the phrase fairly admits of it, which will effect the obviously different statutory aim of § 217 (a).

Atlantic Cleaners & Dyers v. *United States, supra,* was a suit brought to enjoin appellants from continuing an alleged conspiracy in restraint of trade and commerce in cleaning, dyeing, and otherwise renovating clothes contrary to § 3 of the Sherman Anti-trust Act. The defense was that appellants were engaged solely in the performance of labor and service in cleaning, dyeing and renovating wearing apparel, etc., and that this did not constitute "trade" within the meaning of the act. The argument was that since the words "trade or commerce" in § 1 of the act, which dealt with interstate commerce, must be construed not to include a business such as that carried on by appellant, the identical words used in § 3 dealing with restraint of trade or commerce within the District of Columbia should be given the same interpretation. Considering the subject matter of the act, and the scope of the legislative power exercised in the one case as compared with that exercised in the other, we held otherwise. In arriving at the conclusion that the word "trade" as used in § 3 was to be given a broader interpretation than the same word as used in § 1, we considered the history leading up to and accompanying the passage of the Sherman Act, the mischief to be remedied, and other circumstances, and held that Congress intended to exercise all the power it

possessed; and since the scope of its power in dealing with the District was more extensive than when dealing with interstate commerce, we gave to the word "trade" its full meaning under § 3, unaffected by the narrower meaning which it might have under § 1. The considerations invoked in that case are equally applicable here.

But it is said that the phrase in question must be restricted in accordance with the rule of *ejusdem generis*. The point is not without merit. The phrase reads "interest on bonds, notes, or other interest-bearing obligations." If the rule invoked be held controlling, it would follow that the general words "other interest-bearing obligations" must be assimilated to the particular words "notes and bonds", and restricted to obligations of the same kind. But while the rule is a well-established and useful one, it is, like other canons of statutory construction, only an aid to the ascertainment of the true meaning of the statute. It is neither final nor exclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction, of which the rule of *ejusdem generis* is only one. If, upon a consideration of the context and the objects sought to be attained and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the legislature shall not fail.

The general object of this act is to put money into the federal treasury; and there is manifest in the reach of its many provisions an intention on the part of Congress to bring about a generous attainment of that object by imposing a tax upon pretty much every sort of income subject to the federal power. Plainly, the payment in question constitutes income derived from a source within the United States; and the natural aim of Congress would be to reach it. In *Irwin* v. *Gavit*, 268 U. S. 161, 166, this court, rejecting the contention that certain payments there involved did not constitute income, said: "If these payments properly may be called income by the common understanding of that word and the statute has failed to hit them it has missed so much of the general purpose that it expresses at the start. Congress intended to use its power to the full extent. *Eisner* v. *Macomber*, 252 U. S. 189, 203." Although Congress intended, as the court held in the

Viscose case, *supra*, to include interest on a tax refund made to a *domestic* corporation, we are asked to deny such intention in respect of a competing *foreign* corporation. But we see nothing in the relationship of a foreign corporation to the United States, or in any other circumstance called to our attention, which fairly shows that such a discrimination was within the contemplation of Congress. On the contrary, the natural conclusion is that if any discrimination had been intended it would have been made in favor of, and not against, the domestic corporation, which contributes in a much more substantial degree to the support of the people and government of the United States.

The foregoing views are put beyond all fair doubt, if otherwise any would remain, by the consideration of a qualification contained in the section itself. After declaring that interest on bonds, notes, or other interest-bearing obligations shall be treated as income from sources within the United States, the section immediately proceeds to exclude from that language "interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States . . ." It is apparent from this exception that Congress understood that unless the exception were made, the interest on such deposits would fall within the term "interest-bearing obligations", and to prevent that result it was necessary to specifically create the exception. The conclusion fairly results that the clause was intended to include all interest-bearing obligations not specifically excepted. The opinion delivered by Lord Tenterden in *The King* v. *The Trustees for paving Shrewsbury*, 3 Barnewall & Adolphus, 216, is directly in point. There a statute imposed certain charges and expenses, in connection with the operations of a gas light company, upon tenants or occupants of houses, shops, malt-houses, granaries, etc., and *hereditaments* within Shrewsbury, "meadow and pasture ground excepted". The contention was that the word "hereditaments" must be confined to hereditaments *ejusdem generis* with those enumerated. The court, holding otherwise, said (p. 220):

"Now it is certain that meadows and pastures would have fallen within the meaning of the word 'hereditament', if they had not been excepted; it was argued, therefore, that this special exemption of meadows and pastures shewed that the other word had been previously used in its larger sense. On the other hand it was contended, that these words had been introduced merely ex majori cautelâ. Upon the best consideration we have been able to give

this case, we are of opinion, that we ought not to consider the exception of meadow and pasture ground as made only for greater caution, but are bound to look upon it as introduced by way of special exception, and so to construe the clause: and, consequently, every thing not so specifically excepted must be understood to fall within the general liability."

Interest on deposits is no more akin to notes and bonds than is interest on tax refunds; and the fact that the former was expressly excepted from the operation of the substantive provision quite clearly justifies the conclusion that the lawmakers attached to the general clause a larger meaning than it would have if limited to things *ejusdem generis* with those specifically enumerated. Certainly, if it was necessary to save interest on deposits from the embrace of the general clause by an exception, it was equally necessary to save interest on tax refunds by a like exception.

Second. Is the United States a resident within the meaning of the words "residents, corporate or otherwise"? We think it is. It many times has been held that the United States or a state is a "person" within the meaning of statutory provisions applying only to persons. See *Ohio* v. *Helvering,* 292 U. S. 360, 370, and cases cited. In *Martin* v. *The State,* 24 Tex. 61, 68, this was held in respect of a criminal statute, notwithstanding the general rule that such statutes are to be construed strictly. The statute there penalized the false making or fraudulent alteration of a public record when done "with intent that any person be defrauded". The state supreme court held that the state was to be taken as a "person" within the meaning of the statute, and one who made the entry with intent to defraud the state violated the statute. The Texas decision was expressly followed by this court in *Stanley* v. *Schwalby,* 147 U. S. 508, 517, where it was held that the word "person" used in the statute there under consideration would include the United States "as a body politic and corporate". Blackstone, writing on the rights of persons (1 Bl. 123) says:

"Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic."

While it cannot be said that the United States, in its corporate capacity as an artificial person, has a bodily presence in any place,

it is not unreasonable to hold that in the eye of the law, it has a residence, and especially so when a contrary holding would defeat the evident purpose of a statute. This may be in the nature of a legal fiction; but legal fictions have an appropriate place in the administration of the law when they are required by the demands of convenience and justice. Thus, intangible personal property has been held to have a situs at the domicile of the owner, although intangibles ordinarily have no actual situs and the paper evidence of their existence may be elsewhere. *First National Bank* v. *Maine,* 284 U. S. 312, 328-329. If to carry out the purposes of a statute it be admissible to construe the word "person" as including the United States, it is hard to see why, in like circumstances, it is inadmissible to construe the word "resident" as likewise including the United States.

And, finally, if the United States be not a "resident" in respect of interest upon "other interest-bearing obligations", it is, of course, not a "resident" in respect of interest upon its bonds held by nonresident aliens and corporations. The interest upon many of these bonds is subject to a super-income tax and to certain other taxes. If it had been intended to make an exemption in respect of such taxes in favor of nonresidents, it is reasonable to suppose that Congress would have said so in explicit terms* instead of leaving the fate of taxes upon the large sums thus involved to depend upon the way in which a court might happen to construe the word "resident"—a most unsatisfactory substitute, as the conflicting decisions in this and the next succeeding case bear witness. We cannot assent to the view that Congress has written into the law an exception of such importance in a manner so indirect and casual.

In the foregoing discussion, we have not been unmindful of the rule, frequently stated by this court, that taxing acts "are not to be extended by implication beyond the clear import of the language used", and that doubts are to be resolved against the government and in favor of the taxpayer. The rule is a salutary one, but it does not apply here. The intention of the lawmaker controls in the construction of taxing acts as it does in the construction of other statutes, and that intention is to be ascertained, not by taking the word or clause in question from its setting and view-

*As, for example, it did in the Act of March 3, 1919, § 4, c. 100, 40 Stat. 1309, 1311.

ing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use, and other appropriate tests for the ascertainment of the legislative will. Compare *Rein* v. *Lane,* L. R. 2 Q. B. Cases 144, 151. The intention being thus disclosed, it is enough that the word or clause is reasonably susceptible of a meaning consonant therewith, whatever might be its meaning in another and different connection. We are not at liberty to reject the meaning so established and adopt another lying outside the intention of the legislature, simply because the latter would release the taxpayer or bear less heavily against him. To do so would be not to resolve a doubt in his favor, but to say that the statute does not mean what it means.

"The rule of strict construction is not violated by permitting the words of a statute to have their full meaning, or the more extended of two meanings. The words are not to be bent one way or the other, but to be taken in the sense which will best manifest the legislative intent. *United States* v. *Hartwell,* 6 Wall. 385, 396; *United States* v. *Corbett,* 215 U. S. 233, 242." *Sacramento Nav. Co.* v. *Salz,* 273 U. S. 326, 329. The rule of strict construction applies to penal laws, but such laws are not to be construed so strictly as to defeat the obvious intention of the legislature; or so applied as to narrow the words of the statute to the exclusion of cases which those words, in the sense that the legislature has obviously used them, would comprehend. *United States* v. *Wiltberger,* 5 Wheat. 76, 95. That view, expressed by Chief Justice Marshall, has since been frequently followed by this court. See, for example, *American Fur Company* v. *The United States,* 2 Pet. 358, 367; *The United States* v. *Morris,* 14 Pet. 464, 475; *United States* v. *Hartwell, supra,* 395-6; *Donnelley* v. *United States,* 276 U. S. 505, 512.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.